

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

RICHARD MARSHALL,	*
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Plaintiff,	*
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	*
v.	*
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	*
	Civil Case No. 2:06-cv-701-ID-CSC
CHRIS WEST, in his individual capacity,	*
LASHUN HUTSON, in his individual capacity	*
	*
	*
Defendants.	

**PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

COMES NOW Plaintiff, in the above styled cause, by and through their counsel of record, and respond to Defendants' Motion for Summary Judgment as follows:

1. STATEMENT OF FACTS.

On the afternoon of June 28, 2005, Richard Marshall was driving his 1971 Chevrolet Nova home on County Road 7 in Lowndes County. (Ex. 1, Marshall Dep. 27:15-17, 36:8-10, Nov. 14, 2007.) Riding in the passenger seat was his cousin Kelvin Carmichael. (Ex. 2, Carmichael Dep. 26:7-10, Nov. 14, 2007.) Marshall and Carmichael had spent the morning at their aunt's house pulling an engine with their cousins. (Marshall Dep. 23:23-24:11.) Inside the car the two men sat on a bench-style seat and between them rested a 357 Magnum pistol. (Marshall Dep. 61:14-62:19.) Carmichael had neither seen the pistol nor seen Marshall with a gun before but did not ask why the pistol was there. (Carmichael 29:8-31:2.)¹ County Road 7

¹Marshall did not have a concealed weapon permit, (Marshall Dep. 33:10-11.), but the pistol did not belong to Marshall. The owner of the pistol had left it in Marshall's car three or four days earlier after receiving a ride. (Marshall Dep. 30:10-32:21.)

was empty, and Marshall drove down the narrow and curvy rural road around thirty-five to forty miles per hour in the hot afternoon with the windows down and the music playing loudly.

(Marshall Dep. 45:10-46:6.)

The only other car on the road Marshall saw that afternoon was a bluish or aquamarine Lincoln Town Car that was traveling towards them in the opposite direction. (West Dep. 21:10-13, Jan. 21, 2008.) After the car passed by, Marshall glanced in his rearview mirror and saw something strange: the passing car appeared to slam on its brakes and started veering off to the side of the road. (Marshall Dep. 39:14-41:2.) Marshall thought that perhaps the driver was drunk or the car's tire had blown out, and he kept driving towards home. (Marshall Dep. 41:1-10.)

Without warning, the aquamarine car suddenly appeared in the passing lane next to them. (Marshall Dep. 41:13-19.) Inside were two black males in black t-shirts that neither Marshall nor Carmichael recognized. (Marshall Dep. 36:8-10; Carmichael Dep. 34:4-5.) The passenger appeared to be motioning Marshall to pull over, but having been robbed before Marshall was not about to simply pull over on a deserted country road for two unknown men crazily driving a civilian car. (Marshall Dep. 46:13-47:23; 50:3-5.) Instead, Marshall yelled at the men, "What the fuck y'all want." (Marshall Dep. 50:1.) Unfortunately for Marshall, he had just unknowingly cursed at Lieutenant Christopher West and Officer Lashun Hutson. (West Dep. 22:17-19; Hutson Dep. 20:10-11, Jan. 21, 2008.)

Also unknown to Marshall, West and Hutson had been looking for him earlier that day. (West Dep. 14:17-20.) The officers had been following up on a tip from an anonymous source claiming that Marshall had been selling drugs. (West Dep. 14:1-11.) The anonymous source was

not a reliable witness. (West Dep. 17:20-23.)² Neither officer had any prior dealings with Marshall. (West Dep. 16-18; Hutson Dep. 12:3-6.) Additionally, Marshall had never been arrested for any drug related charges. (Marshall Dep. 17:8-23:4.) Thus, the officers had driven out to Marshall's home merely to do a "knock-and-talk." (West Dep. 14:1-20.)

After leaving Marshall's home, the officers were driving their bluish or aquamarine Lincoln Town Car on County Road 7 when they passed Marshall's car and turned around to pursue. (West Dep. 18:23-19:18.) Marshall was driving the speed limit. (West Dep. 20:16-17.) West coincidentally observed that neither Marshall nor Carmichael was wearing a seatbelt,³ which provided probable cause to stop Marshall so that West could question him about drugs. (West Dep. 56:17-57:2.) While Marshall does not dispute that he was not wearing his seatbelt, (Marshall Dep. 28:22-23), Carmichael was wearing his. (Carmichael Dep. 27:16-17.)⁴ West then pulled alongside Marshall's car. (West 21:7-9.)

After Marshall cursed at them, West pulled the aquamarine car back behind Marshall's but did not activate either a siren or flashing blue lights. (Marshall Dep. 49:1-9.) Because County Road 7 is wavy, Marshall could not speed up, and he continued to drive between thirty-five and forty miles per hour toward Highway 21 and home. (Marshall Dep. 53:8-22.) Although

²Within the time frame allowed, the officers would have obtained a search warrant had the anonymous source been reliable. (West Dep. 17:16-18:8.)

³Factually, it is unclear whether West saw that Carmichael was not wearing his seatbelt. West's incident/offense report originally states that neither the driver nor passenger was wearing a seat belt. (West Dep. 52:23-53:2, 56:17-21.) Subsequently, West states he saw that Marshall was not wearing his seatbelt. (West Dep. 19:20-22.)

⁴Although Marshall does not recall wearing his seatbelt, Carmichael recalls that Marshall was wearing his and in fact told Carmichael to put his belt on. (Carmichael Dep. 27:18-28:5.)

the aquamarine Lincoln Town Car was riding his bumper, Marshall did not try to speed away because he was afraid of getting hurt on the wavy road. (Marshall Dep 53:23-54:5.) Moreover, Marshall's car could not run very fast anyway. (West Dep. 21:22-23.) Marshall stayed close to the speed limit while on County Road 7. (Hutson Dep. 17:15-21.)

At the intersection of County Road 7 and Highway 21, Marshall performed a rolling stop and then turned right onto Highway 21 towards home. (Marshall Dep. 52:4-10.) The intersection does not have a stop sign; it has a yield sign with a flashing yellow light. (Marshall Dep. 51:15-16; Carmichael Dep. 40:9-18.) Once on Highway 21, Marshall sped up a little. (West Dep. 48:6-7.) Marshall got his slow running car up to about fifty-five miles per hour when the aquamarine car again pulled beside them. (Marshall Dep. 53:6-7.) As Marshall looked over he again saw the unknown man waving him over but this time Marshall also saw a gun in the man's hand.⁵ (Marshall Dep. 54:9-23.) Carmichael also saw the man holding the gun and asked who the men in the aquamarine car were. (Carmichael Dep. 41:16-22.) Marshall told Carmichael that he did not know but he thought that they were out to rob them, and he was not going to stop. (Marshall Dep. 57:3-7.) Carmichael then told Marshall not to let the unknown men catch them. (Carmichael Dep. 41:16-22.)

The aquamarine car again fell behind Marshall's car and rammed his car in the rear. (Marshall Dep. 60:2-4.) Marshall almost lost control and slowed from about fifty-five miles per hour to around thirty-five to forty miles per hour. (Marshall Dep. 64:4-9) After about ten

⁵While both Marshall and West stated that they activated their flashing blue light and showed their badges, both Marshall and Carmichael testified that the officers did not activate a blue flashing light or show their badges. (Marshall Dep. 59:14-17; Carmichael Dep. 38:16-7, 55:5-16.)

seconds, Marshall's car was again rammed from the rear.⁶ Carmichael then saw that one of the men appeared to be talking on a radio and then told Marshall that he thinks they may be cops. (Carmichael Dep. 46:21-47:3.) Immediately after, the aquamarine car rammed Marshall's car on the rear driver's side sending Marshall's car off the road causing Marshall's head to hit the steering wheel. (Marshall Dep. 69:16-70:3.)

West and Hutson jumped from the car with their weapons drawn and yelled for Marshall to get out of the car. (West Dep. 30:18-23.) At some point after exiting their car the officers pulled their badges from under their shirts. (Carmichael 55:8-18.) Dazed from hitting his head Marshall opened his door, stepped out of the car, and held his hands up. (Marshall Dep. 86:8-9.) West ordered Marshall to get on the ground. (West Dep. 32:1-18.) Marshall, dazed, confused, and agitated, remained standing with his hands up asking what was going on. (Marshall Dep. 86:8-87:9.) West then fired his gun into the ground approximately six to eight feet from where Marshall stood. (West Dep. 32:18-21; Hutson Dep. 25:14-15.)

Marshall stood frozen while West approached with his gun raised. (West Dep. 32:22-33:7.) West then swept Marshall's feet slamming him to the ground face first, put a foot in Marshall's back, and cuffed him. (Marshall Dep. 90:3-9.) After cuffing Marshall, West approached Marshall's car and saw the pistol in the seat for the first time. (West Dep. 33:15-21.)

⁶At about this point in the chase, West and Hutson state that Marshall threw out a plastic baggie containing drug evidence and that hit their windshield. (West 24:1:4; Hutson 22:21-23:2.) The officers' original statements omitted any mention of an object striking their windshield. (West Statement, Ex. 5; Hutson Statement, Ex. 6.) This testimony is highly disputed because lab tests on the baggie found neither fingerprints nor drug residue. (West Dep. 45:1-10; Forensic Reports, Ex. 8) Additionally, both Marshall and Carmichael deny that any such baggie was thrown out of the window. (Marshall Dep. 74:17-21; Carmichael Dep. 48:9-11.)

After West had cuffed Marshall, Hutson got Carmichael out of the car, cuffed him, and put him on the ground. (Hutson Dep. 25:1-6.) Afterward, Hutson walked back to Marshall's car and saw the pistol in the seat for the first time. (Hutson Dep. 28:8-15.)

West then pulled Marshall off of the ground, set Marshall against the car, and began asking why he did not pull over when they showed their badges. (Marshall Dep. 96:1-3.) Marshall stated that he did not see any badges, only a gun. (Marshall Dep. 96:3-4.) West then grabbed Marshall's pants, shoved him against the car, and searched him. (Marshall Dep. 96:5-8.) During the search West removed Marshall's wallet and threw it into the back seat. (Marshall Dep. 96:8-11.) Marshall's wallet contained five hundred dollars at that time. (Marshall Dep. 33:12-16.) West then told Marshall to get in the back of his Nova, but Marshall, because he is a large man, stated he could not fit in the small back seat of his car. (Marshall Dep. 99:13-19.) Angered, West grabbed Marshall by the pants and slammed him against the car breaking the zipper and button causing Marshall's pants to fall to the ground. (Marshall Dep. 99:19-100:1; Carmichael Dep. 69:21-23.) West then choked Marshall until he could not breathe and forced him into the back of the Nova.⁷ (Marshall Dep. 101:19-102:36; Carmichael 69:18-70:3.)

By this time cars were driving by on Highway 21. (Marshall Dep. 100:5-6.) West then walked over to the aquamarine car and put the blue light on roof of the aquamarine car. (Marshall Dep. 100:9-10.) At first the blue light would not work, and West had to bang on the light three or four times before it started working. (Marshall Dep. 100:10-22.) After other

⁷At this point if West's version of the facts is to be believed, after West had just run Marshall off the road, shot a gun in his direction, slammed him to the ground, and cuffed him, West suddenly became concerned that Marshall, having just lost his pants, might feel humiliated being seen in his boxer shorts; therefore, out of concern for Marshall, West forced him into the backseat of the Nova. (West Dep. 34:3-19.)

officers arrived, Marshall was put in a patrol car and taken in for booking. (Marshall Dep. 118:3-11.) At booking Marshall noticed most of his money was missing and called it to a deputy's attention, but West stopped him and told the deputy not to worry about it. (Marshall Dep. 123:7-18.) Marshall received a courtesy warning for attempting to elude and a seatbelt violation. (Ex. 7.) Marshall was charged with possession of a controlled substance and carrying a pistol without a permit. (Marshall Dep. 138:10-16.) All charges against Marshall were dropped. (Marshall Dep. 139:2-4.)

II. STANDARD OF REVIEW.

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate when "the pleading, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The party requesting summary judgment "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Id.* at 323. The movant can meet this burden by presenting evidence showing there is no dispute of material fact, or by showing the non-moving party has failed to present evidence in support of some element of its case on which it bears the ultimate burden of proof. *Id.* at 322-23.

Once the moving party has met its burden, Rule 56(e) "requires the nonmoving party to go beyond the pleadings and by [its] own affidavits, or by the 'depositions answers to

interrogatories and admission on file,’ designate ‘specific facts showing that there is a genuine issue for trial’”. *Id* at 324. To avoid summary judgment, the nonmoving party “must do more than simply show that there si some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). On the other hand, a court ruling on a motion for summary judgment must believe the evidence of the non-movant and must draw all justifiable inferences from the evidence in the non-moving party’s favor. *Anderson v. Liberty Lobby , Inc.*, 477 U.S. 242, 255 (1986). After the nonmoving party has responded to the motion for summary judgment, the court must gant summary judgment if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed R. Civ. P. 56(c).

“Under the established rule of law in this Circuit, a plaintiff can survive a motion for summary judgment or for judgment as a matter of law simply by presenting evidence sufficient to demonstrate a genuine issue of material fact as to the truth or falsity of the employer's legitimate, nondiscriminatory reasons.” *Evans v. McClain of Georgia, Inc.*, 131 F.3d 957, 964-65 (11th Cir. 1997).

III. ARGUMENT.

Under § 1983, police officers may be held accountable when their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known. *Vinyard v. Wilson*, 311 F.3d 1340, 1346 (11th Cir. 2002). A plaintiff can establish that the law clearly provided notice to the officers that their conduct was unconstitutional by submitting fact-specific precedents or demonstrating that the conduct “lies so obviously at the very core of what the Fourth Amendment prohibits that the unlawfulness of the conduct was

readily apparent.” *See Id.* at 1355. Here, the grossly disproportionate force used against Marshall for a seatbelt violation is a clearly established constitutional violation because no reasonable officer could have believed that Defendants’ actions were legal. Under the totality of the circumstances, Defendants’ actions as a whole constituted an unreasonable breach of Marshall’s Fourth Amendment rights.

A. Crucial Factual Distinctions.

Before proceeding to the legal argument, Plaintiff must address certain facts proffered by Defendants in support of their motions. First, the pistol and bullets discovered in Marshall’s car are not relevant. For evidence to be relevant it must be probative of a fact of consequence. Fed. R. Evid. 401. The pistol and bullets are not relevant because, according to their own testimony, Defendants did not know about the pistol or bullets until after Marshall was in handcuffs. (West Dep. 33:15-21; Hutson Dep. 28:8-15.) Thus, Defendants may not justify their precursory actions by the presence of the pistol.

The facts demonstrate that Marshall did not intend to use the pistol against Defendants. After his car was forced off of the road and Marshall was ordered out of his car, he complied. Marshall’s movements as he opened the car door, stepped out, and held his hands up clearly distanced him from the pistol. While Hutson testified that he saw Marshall reaching back into his car, and he believed that was the reason West fired his pistol, his testimony is not admissible. Testimony must be based on personal knowledge. Fed. R. Evid. 602. Here, Hutson’s testimony attempts to express what was in West’s mind when West fired his gun, which is clearly beyond the scope of Hutson’s personal knowledge.

West’s own testimony disputes Hutson’s allegation that Marshall attempted to reenter his

car. West first testified that Marshall was out of his car, standing between the car and open door, and was yelling and cussing. (West Dep. 32:11-14.) West then testified that he then fired his weapon after Marshall did not get on the ground immediately. (West Dep. 32:14-21.) Thus, West demonstrates that he did not see Marshall make an attempt to reach back into his car.

Second, Defendants' allegations about Marshall throwing drug evidence out of his car window is not merely a disputed fact; it is a nonexistent fact. Defendant West improperly proffers that “[a]s the undisputed facts show, Lt. West did not execute the PIT maneuver until after a baggy containing a white powdery substance hit his windshield.” (West Mem. Supp. Summ. J. 31) (emphasis added). He then went on to improperly claim that the baggie contained illicit drugs. (West Mem. Supp. Summ. J. 31.) These statements are improper and deceptive for the three following reasons: 1) a baggie being thrown from Marshall's window is a disputed fact; 2) the existence of white powder or any drugs in the alleged baggie is a disputed fact; and 3) a baggie containing illicit drugs is a nonexistent fact.

An undisputed fact is an uncontested or admitted fact. *Black's Law Dictionary* 269 (2nd pocket ed. 2001). Here, both Marshall and Carmichael expressly deny that any baggie was thrown out of the window. (Marshall Dep. 74:17-21; Carmichael Dep. 48:9-11.) Additionally, West even testified that at the point the [alleged] baggie was thrown out the window there was no evidence that Marshall threw drugs out of his window or possessed drugs. (West Dep. 49:18-22.) Therefore, these facts are clearly disputed and Defendant's attempt to classify them otherwise in order to influence this Court is clearly improper.

No factual evidence exists that demonstrates Marshall had illicit drugs in his possession. Defendants presented a baggie to the lab for forensic testing; however, the tests found neither

fingerprints nor drug residue.⁸ (West Dep. 45:1-10; Forensic Reports, Ex. 8.) Instead, the only “evidence” that supports Defendants’ allegations is their subjective belief contrary to forensic results and a discarded sandwich bag from somebody’s lunch.

B. Additional Misrepresentations of Fact

In addition to the factual errors noted above, the Memorandum Brief in Support of Defendant Chris West’s Motion for Summary Judgment proffers more misrepresentations of fact to this Court.

Defendant West erroneously informs this Court that there is no evidence in the record that Marshall ever tried to tell Defendants he did not know they were police officers. (West Mem. Supp. Summ. J. 10 footnote 4.) Marshall stated in his deposition, however, that he tried to tell West he thought they were trying to rob him. (Marshall Dep. 97:1-4.)

Defendant West incorrectly cites to his deposition as stating that both Marshall and Carmichael were not wearing seatbelts when the deposition only mentions Marshall. (West Mem. Supp. Summ. J. 8) (*citing* West Dep. 19:20)).

Defendant West states they received information that Marshall was selling drugs but avoids bringing a crucial fact to this Court’s attention. (West Mem. Supp. Summ. J. 8) West testified that the tip did not come from a reliable source and was insufficient to show probable cause. (West Dep. 17:20-23.)

Despite forensic tests and West’s testimony to the contrary, Defendant West erroneously states that a baggie with residue was subsequently found by Defendants. (West Mem. Supp.

⁸However, contrary to the laboratory tests, West testified that he still believes the baggie contained residue. (West Dep. 58:8-10.)

Summ. J. 26.) West testified that the lab tests prove there were neither drugs nor residue found in the baggie. (West Dep. 58:2-7.)

Defendant West improperly states that Marshall admitted to fleeing from Defendants. (West Mem. Supp. Summ. J. 32). Marshall has not admitted to fleeing from Defendants; rather, he has admitted to not pulling over at the demand of two unknown and unidentified persons.

Finally, Defendant West states that West “conceded” there was a high speed chase when clearly this point is not his to concede. (West Mem. Supp. Summ. J. 32.) However, Defendant avoids mentioning that West testified that Marshall’s 1973 Nova could not run very fast. (West Dep. 21:22-23.)

Plaintiff has addressed Defendant’s factual misrepresentations and errors as well as possible. However, because West’s motion misrepresents numerous facts to this Court, Plaintiff requests this Court summarily deny Defendant West’s motion due to the lack of candor and reliability of the brief. Defendant Hutson’s motion does not contain similar factual misrepresentations. However, due to Defendant Hutson’s express adoption of “any and all arguments made by Chris West,” (Hutson Mem. Supp. Summ. J. 4.), Plaintiff requests denial of Hutson’s motion on the same grounds.

C. Defendants’ unreasonable actions taken as a whole resulted in a violation of Marshall’s Fourth Amendment Rights.

The touchstone of a court’s “analysis under the Fourth Amendment is always ‘the reasonableness in all the circumstances of the particular governmental invasion of a citizen’s personal security.’” *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09 (1977). “Reasonableness, of course, depends ‘on a balance between the public interest and the individual’s right to personal

security free from arbitrary interference by law officers.”” *Id.* at 109. Here, Marshall’s actions were reasonable; conversely, Defendants’ actions were not.

Marshall’s actions were reasonable. Under the Alabama Code § 32-5A-193, in order to flee or attempt to flee from a police officer, the driver must “willfully” fail to stop his car or flee when given a visual or audible signal. Although his greeting to Defendants when they pulled up beside him was less than ideal, Marshall had no reason to know that Defendants were police officers. First, Defendants’ car did not look like a police car. Defendants drove a bluish aquamarine Lincoln Town Car. Defendant West even testified that their car did not look much like a police car. (West Dep. 21:14-15.) Second, Defendants were not dressed in uniform. Marshall saw two unknown men wearing black t-shirts. West testified that they were wearing street clothes. (West Dep. 60:18-22.) Third, Defendants had not activated a flashing blue light or a police siren.⁹ Rather, Defendants did not activate the flashing blue light until after Marshall was already in handcuffs and even were unable to activate the light until West banged on it a few times. (Marshall Dep. 100:10-22.) Defendants did not expressly state that they did not activate a police siren; however, because the Lincoln Town Car had been confiscated and acquired through a condemnation proceeding, it likely was not equipped with a siren.¹⁰ (West Dep. 13:13-21.) While Defendants blew the horn and flashed the headlights, (West Dep. 21:7-9), those actions

⁹Defendants aver that they deployed the flashing blue lights by plugging it into the cigarette lighter (West Dep. 19:22-21:2); however, in the light most favorable to the nonmoving party and for the purposes of this motion, Defendants did not deploy the flashing blue light. (Marshall Dep. 49:1-9)

¹⁰Additionally, West’s deposition states that he activated a flashing blue light, honked his horn, and flashed his lights, but omits any mention of siren. (West Dep. 19:20-21:9.) In absence of evidence to the contrary under this motion’s standard of review, stating that Defendants used no siren is proper.

would alone would not reasonably identify Defendants as police officers. Had the Defendants actually activated a blue flashing light and siren, blowing the horn and flashing the headlights would not have served any purpose.

Marshall's belief that Defendants posed a threat was reasonable. While Marshall's fear was likely motivated in part because he had previously been robbed, his belief that Defendants posed a threat was not irrational. First, as noted above, Defendants did not adequately identify themselves as police officers. Second, this incident occurred on a deserted country road. Third, Defendants were strangers to Marshall. Finally, Defendants' behavior, objectively viewed by someone unaware that they were police officers would be charitably described as erratic. Due to Defendant West's turn-around maneuver, Marshall at first thought either the driver was drunk or had a flat tire. The next time Marshall saw Defendants they had pulled beside him on the narrow country road, were waving their arms at him, and were yelling out the window at him. Defendants then followed him, honked their horn, flashed their lights, and stayed right on his bumper.

Under the circumstances, Marshall's actions were reasonable. While Defendants have framed this incident as a high speed pursuit where Marshall attempted to elude them, the facts demonstrate a rather average speed chase where Marshall simply did not pull over. West even testified that Marshall's car could not run very fast. (West Dep. 21:22-23.) The majority of the so called "chase"¹¹ took place on County Road 7. While on County Road 7, it is undisputed that Marshall did not exceed the speed limit. (Hutson Dep. 17:15-21; West Dep. 19:12-20:17.)

¹¹Plaintiff is using the word "chase" rather loosely and does not concede that an actual chase indeed took place but is merely using the word to describe the incident.

While the speed limit was approximately forty-five miles per hour, Marshall was driving between thirty five to forty miles per hour, and did not speed even while Defendants rode his bumper. (Marshall Dep. 45:10-46:6; 48:15-17.) Once Marshall turned onto Highway 21, he simply continued driving toward home until he was run off of the road by Defendants.

Conversely, Defendants' actions were unreasonable. What began as a pretextual seatbelt stop,¹² led to Defendants ramming Marshall's car numerous times, running his car off the road, discharging a weapon in his direction, manhandling, strangling, arresting him, and stealing his money. The test for determining whether officers have acted reasonably under the Fourth Amendment is an objective reasonableness test. *Graham v. Connor*, 490 U.S. 386, 396 (1989.) While Defendants' pretextual justification for pulling Marshall over may have been objectively reasonable under Defendants' version of the facts at the start of this encounter, that same justification cannot overcome Marshall's reasonable expectation that Defendants would at least adequately identify themselves before running him off the road, shooting at him, manhandling, and then arresting him.

Whether officers' actions are objectively reasonable "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. Here, the severity of Marshall's crime was very low: a seatbelt violation, a non-arrest matter for which only a traffic ticket could be issued. Marshall also did not pose a threat to anyone's safety.

¹²West admits that he wanted to use the seatbelt violation for the purpose of pulling Marshall over to question him about drugs. (West Dep. 56:17-57:2)

He did not try to outrun the Defendants; instead, he drove the speed limit and merely did not pull over because he did not know that Defendants were police officers. Conversely, Defendants' actions were unreasonable from the start because they failed to adequately identify themselves and drove behind Marshall in an aggressive manner. Eventually Defendant West executed a dangerous and destructive PIT maneuver even though Marshall was only driving thirty-five miles per hour at the time. (West Mem. Supp. Summ. J. 32.)

Additionally Marshall did not resist or attempt to evade. While driving, Marshall did not attempt to leave the road or lead Defendants on a path through the woods. (West. Dep. 49:9-13.) After Defendant West executed the PIT maneuver, Marshall exited his car and held his hands up. (Marshall Dep. 86:8-9.) While he did not get on the ground, and was vociferous because Defendants had just run him off the road, Marshall did not make a violent move against Defendants, never attempted to hit Defendants, and never attempted to run away. (West Dep. 59:6-12.) Even so, Defendant West fired his weapon into the ground a mere six to eight feet away from where Marshall stood. (West Dep. 32:16-21.) Subsequently, West threw Marshall to the ground, choked him, and arrested him all because of a seat belt violation.

West's warning shot was constitutionally unreasonable. The Supreme Court has provided guidelines for determining when it is constitutionally reasonable for a police officer to use deadly force when firing a gun at a suspect. *Acoff v. Abston*, 762 F.2d 1543, 1547 (11th Cir. 1985) (*citing Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985)). The *Garner* standard contains the three following elements: 1) the officer must have probable cause to believe the suspect poses a threat; “[p]robable cause of this sort exists where the suspect actually threatens the officer with a weapon or where there is probable cause to believe that the suspect has committed a crime

involving the infliction or threatened infliction of serious physical harm” 2) deadly force must be necessary to prevent escape, and 3) the officer must give fair warning if possible. *Acoff*, 762 F.2d at 1547.

Under the *Garner* standard, West firing his gun in Marshall’s direction is clearly unreasonable because Marshall was not armed, was not threatening Defendants with a weapon, and was not attempting to escape. (West Dep. 32:14-21.) Arguably, West did not use deadly force because he was aiming at the ground. However, *Garner* is a reasonableness standard; thus, the determination cannot rest purely on whether the bullet actually hit its mark. Additionally, at least one court has acknowledged that firing a warning shot could possibly constitute a use of deadly force. *See Madrid v. Gomez*, 889 F. Supp. 1146, 1184 (N.D. Cal. 1995). Here, Marshall was subjected to potential deadly force because West aimed and fired his weapon within a mere six to eight from where Marshall stood. (West Dep. 32:18-21.)

Contrary to Defendant West’s argument, the Eighth Circuit did not expressly hold that firing warning shots in the air near a crowd does not violate anyone’s constitutional rights. (Def. Marshall Mot. Summ. J. 33 (*citing Otey v. Marshall*, 121 F.3d 1150, 1156 (8th Cir. 1997)). Rather, Defendant manufactured that holding out of whole cloth. In *Otey*, the court held that a police chief did not violate a well establish right for failing to properly train a subordinate officer who fired the warning shots into the air. *Otey*, 121 F.3d at 1156. Analyzing the facts, the Eight Circuit discussing the facts reasoned that the subordinates officer’s warning shots in a crowd did not violate anyone’s rights because there was no evidence that anyone was seized, unconstitutionally or otherwise, because afterward the crowd dispersed and there were no arrests. *Id.* Thus, *Otey* is highly distinguishable from this case and frankly not even on point.

West executing PIT maneuver on Marshall's car was unreasonable. In *Scott v. Harris*, police officers clocked a driver going seventy-three in a fifty-five mile per hour zone. ___ U.S.___, 127 S. Ct. 1769, 1772 (2007). During the chase the driver went at speeds over eighty-five miles per hour on the freeway, through a parking lot, and even collided with one police car. *Id.* at 1773. After being given permission by his supervisor, an officer employed a PIT maneuver. *Id.* As a guidepost for determining whether the officer acted reasonably in executing a PIT maneuver, the Supreme Court stated “[w]e think it appropriate . . . to take into not only the number of lives at risk, but also their relative culpability. *Id.* at 1778. The Court noted that the facts showed the driver's actions had put the lives of the police officers and other drivers at risk, had ignored multiple police cars with sirens and flashing lights, and drove recklessly at high speeds. *Id.*

Conversely, Marshall's culpability did not rise to anywhere near the level of *Scott*. First, Marshall was unaware that Defendants were police officers. Second, Marshall drove neither recklessly nor at excessive speeds. Third, Marshall's driving was not putting anyone's safety at risk. Finally, Marshall's sole offense was a pretextual seat belt violation.

West choking Marshall and forcing him into the back seat of the Nova was unreasonable. In *Vinyard v. Wilson*, a police officer was sued for excessive force when he stopped his patrol car, roughly grabbed his handcuffed prisoner, pulled her by the hair, and then sprayed her in the face with pepper spray. 311 F.3d 1340, 1343-44 (11th Cir. 2002). Factors determining whether such use of force is constitutional include the severity of the crime, whether the suspect poses an immediate threat to safety, and whether she is actively resisting arrest. *Graham v. Connor*, 490 U.S. 386, 396 (1989). In *Vinyard*, the Eleventh Circuit ruled in the plaintiff's favor and found

the factors from *Graham* heavily favored the plaintiff because she was "under arrest for offenses of minor severity, handcuffed, secured in the back of a patrol car, and posing no threat to [the officer], herself or the public." *Vinyard*, 311 F.3d at 1348-49. Similarly, Marshall was handcuffed, posed no threat to Defendants, and had been arrested for a minor offense. Additionally, Marshall was not posing a threat when West threw him on the ground face first.

While Defendant Hutson's actions did not rise to the level of West's, he is not excused because he participated in the entire encounter without any determination of probable cause. When asked about their purpose for pulling Marshall over Hutson stated "I don't know. Whatever Lieutenant West told you his probable cause was for stopping him." (Hutson Dep. 15:15-19.) Hutson further testified that he did not see probable cause, was not looking for probable cause, and any such determination was made solely by West. (Hutson Dep. 15:20-16:21.) Thus, while West was running Marshall off the road, shooting at him, manhandling, and arresting him, Hutson acted as wing man without an inkling of probable cause and apparently without questioning or voicing any reservations to West. Additionally, Hutson held Marshall at gun point and participated in his arrest.

Unfortunately for Hutson, there is no "just following orders" defense. *O'Rourke v. Hayes*, 378 F.3d 1201, 1210 n.5 (11th Cir. 2004). In *O'Rourke*, the Eleventh Circuit found that other officers' unconstitutional behavior did not relieve a defendant officer from the responsibility of deciding for himself whether to violate clearly established constitutional rights. *Id.* at 1210. The court further noted that even when the offending officer was a superior, subordinate officers may be subject to liability under § 1983 if there is a "reason why any of them should question the validity of that order." *Id.* at 1210 n.5. Here, Hudson should have

questioned West's behavior based on his belief that no probable cause existed, or he at least should have made the effort to ask.

IV. CONCLUSION

WHEREFORE, the premises considered, Plaintiff prays this Court will deny Defendants' motions for summary judgment.

RESPECTFULLY SUBMITTED on this the 12th day of March, 2008.

/s/ FRED CLEMENTS
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ASB-5682-R39C

CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following parties or counsel, or by hand delivery, or by facsimile, or by placing a copy of the same in the United States mail, properly addressed and first-class postage prepaid on this 12th day of March, 2008.

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Daryl Masters
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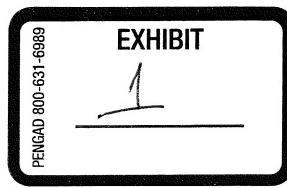
DEPOSITION OF RICHARD MARSHALL

November 14, 2007

Pages 1 through 156

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Deposition of Richard Marshall

November 14, 2007

	Page 1		Page 3
1	IN THE UNITED STATES DISTRICT COURT	1	2
2	FOR THE MIDDLE DISTRICT OF ALABAMA	2	Photograph
3	NORTHERN DIVISION	3	Photograph
4		3	Photograph
5	RICHARD MARSHALL,	4	MapQuest map
6	Plaintiff,	5	Interview sheet
7	vs.	6	Photograph
	CIVIL ACTION NO.	7	Photograph
	2:06-cv-701-ID.CSC	8	Photograph
8		9	Photograph
9	CHRIS WEST, in his individual	10	Photograph
10	capacity, LASHUN HUTSON, in his	11	Photograph
11	individual capacity,	12	Inmate property release slip
12			133
13	Defendants.		
14	*****		
15	DEPOSITION OF RICHARD MARSHALL, taken		
16	pursuant to stipulation and agreement before Lyn		
17	Daugherty, ACCR #66, Certified Court Reporter and		
18	Commissioner for the State of Alabama at Large, in		
19	the Law Offices of Webb & Eley, 7475 Halcyon Pointe		
20	Drive, Montgomery, Alabama, on Wednesday, November		
21	14, 2007, commencing at approximately 10:00 a.m.		
22	*****		
23			
	Page 2		Page 4
1	APPEARANCES	1	STIPULATIONS
2	FOR THE PLAINTIFF:	2	It is hereby stipulated and agreed by and
3	Mr. Jay Lewis	3	between counsel representing the parties that the
4	Mr. Fred L. Clements	4	deposition of RICHARD MARSHALL is taken pursuant to
5	LAW OFFICES OF JAY LEWIS	5	the Federal Rules of Civil Procedure and that said
6	Attorneys at Law	6	deposition may be taken before Lyn Daugherty,
7	847 South McDonough Street	7	Certified Shorthand Reporter, and Commissioner for
8	Montgomery, Alabama 36104	8	the State of Alabama at Large, without the
9	FOR THE DEFENDANT WEST:	9	formality of a commission, that objections to
10	Mr. Gary Wilford	10	questions other than objections as to the form of
11	Mr. Daryl L. Masters	11	the question need not be made at this time but may
12	WEBB & ELEY, P.C.	12	be reserved for a ruling at such time as the said
13	Attorneys at Law	13	deposition may be offered in evidence or used for
14	7475 Halcyon Pointe Drive	14	any other purpose by either party provided for by
15	P.O. Box 240909	15	the Statute.
16	Montgomery, Alabama 36124	16	It is further stipulated and agreed by and
17	*****	17	between counsel representing the parties in this
18	EXAMINATION INDEX	18	case that the filing of said deposition is hereby
19	RICHARD MARSHALL	19	waived and may be introduced at the trial of this
20	BY MR. WILFORD 5	20	case or used in any other manner by either party
21	BY MR. LEWIS 153	21	hereto provided for by the Statute regardless of
22	EXHIBIT INDEX	22	the waiving of the filing of the same.
23	MAR	23	It is further stipulated and agreed by and
	Defendant		
1	Alabama uniform arrest report	17	
2	(Index continued on next page)		

Page 5

1 between the parties hereto and the witness that the
 2 signature of the witness to this deposition is
 3 hereby waived.

4 * * * * *

5 RICHARD MARSHALL

6 The witness, after having first been duly sworn
 7 to speak the truth, the whole truth and nothing but
 8 the truth testified as follows:

9 EXAMINATION

10 BY MR. WILFORD:

11 Q. Would you please state your name for the
 12 record, sir.

13 A. Richard Marshall.

14 Q. Mr. Marshall, my name is Gary Wilford, and
 15 together with Daryl Masters, who is also
 16 here in the room, we're representing the
 17 defendants that you have sued in this
 18 case -- well, excuse me -- one of the
 19 defendants that you've sued in this case,
 20 Chris West. Where do you live?

21 A. Lowndes County, Farmersville.

22 Q. How long have you lived there?

23 A. Basically all my life.

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Page 7

1 to get down. If I ask a question that you
 2 don't understand, please let me know and
 3 I'll be happy to rephrase it, try to put it
 4 another way so that you know exactly what
 5 it is that I'm asking you; all right?

6 A. Okay.

7 Q. Because when I ask you a question and you
 8 give me an answer, I'm expecting that you
 9 understood my question. Can we have that
 10 understanding?

11 A. Okay.

12 Q. This isn't an inquisition. If you need a
 13 break, if you need to talk to your lawyer,
 14 get something to drink, whatever the case
 15 may be, let me know and we can take a
 16 break; all right?

17 A. Okay.

18 Q. And we'll probably do it on our end once or
 19 twice as well.

20 A. All right.

21 Q. Other than your lawyers, who are with you
 22 here today, have you spoken with anyone to
 23 prepare for your deposition today?

Page 6

Page 8

1 Q. Have you ever given a deposition before?
 2 A. No, sir.

3 Q. Let me cover just a few ground rules here.
 4 As you can see, we've got a court reporter,
 5 and one of the things that she's doing is
 6 she's taking down everything that we're
 7 saying in the room here today; okay? And
 8 I'm going to be asking you some questions
 9 and you're going to be answering those
 10 questions for me. And when you do that,
 11 because we've got the court reporter here,
 12 there's a couple of things we need to keep
 13 in mind. The first thing is let's try not
 14 to talk over the top of each other because
 15 it makes it difficult for her to get a good
 16 transcription down. Wait for me to ask my
 17 question completely and then go ahead and
 18 give me a verbal response. And by that I
 19 mean a yes, no, or whatever it may be.
 20 Shaking your head and saying huh-uh and
 21 uh-huh as we tend to do in normal
 22 conversation is, again, one of those things
 23 that's kind of hard for the court reporter

1 A. No, sir.

2 Q. I noticed when you came in this morning I
 3 saw you and Mr. Carmichael walking up
 4 together. Did y'all ride in together
 5 today?

6 A. Yes, sir.

7 Q. Did y'all talk about this case on the ride
 8 up?

9 A. No, sir.

10 Q. Have you ever talked to Mr. Carmichael
 11 about this case?

12 A. No, sir.

13 Q. At any time?

14 A. No, sir.

15 Q. Are you related to Mr. Carmichael?

16 A. Yes. My cousin.

17 Q. Cousin?

18 A. (Witness nods head).

19 Q. Did you review any documents in preparing
 20 for your deposition today?

21 A. Not today, but I have -- through my lawyer
 22 I have.

23 Q. To prepare for this deposition?

Page 9

- 1 A. Not to prepare for the deposition, but for
2 the case.
- 3 Q. What documents did you review?
- 4 A. Just basically disclosure, whatever from
5 the other party.
- 6 Q. The information that we gave you?
- 7 A. Yeah.
- 8 Q. Anything that you provided your attorneys,
9 any documents you provided your attorneys?
- 10 A. None other than what y'all requested.
- 11 Q. What's your date of birth, sir?
- 12 A. 2/24/74.
- 13 Q. And how old does that make you? I'm not
14 very good at math.
- 15 A. 33.
- 16 Q. Where were you born?
- 17 A. Lowndes County. Well, Farmersville through
18 the -- what did they call it back then?
19 Housewife? Selma Hospital is where I was
20 taken. I was born at home.
- 21 Q. With a midwife?
- 22 A. Midwife, yeah.
- 23 Q. Okay. I got you.

Page 11

- 1 A. We never actually lived together. She was
2 in the service at the time. Never shared a
3 residence.
- 4 Q. All right. Do you work now, sir?
- 5 A. No, sir.
- 6 Q. What was the last job that you held?
- 7 A. M & M Logging last -- I think I was laid
8 off January of last year.
- 9 Q. January of '06?
- 10 A. Yes, sir.
- 11 Q. How long did you work for them?
- 12 A. I think I was employed around August '05,
13 somewhere August '05.
- 14 Q. And worked with them until January of '06?
- 15 A. Yes, sir.
- 16 Q. What did you do for them?
- 17 A. I was a topper. Operate power saw.
- 18 Q. How much did you get paid there?
- 19 A. I was making \$10 an hour.
- 20 Q. Who was your supervisor?
- 21 A. David Matthews.
- 22 Q. Did you work prior to August of '05?
- 23 A. The last job before that was Alabama

Page 10

- 1 Are you married?
- 2 A. No, sir.
- 3 Q. Have you ever been married?
- 4 A. Yes, sir.
- 5 Q. How many times have you been married?
- 6 A. Once.
- 7 Q. And who were you married to?
- 8 A. Stephanie Mallory.
- 9 Q. When were y'all married?
- 10 A. In '97. May, I think.
- 11 Q. How long did y'all stay married?
- 12 A. Well, the divorce hasn't been finalized.
- 13 Q. So technically you're still married to her;
14 is that right?
- 15 A. Yes.
- 16 Q. When did y'all file for divorce?
- 17 A. Well, she was in the service. She was
18 really supposed to be handling that. And I
19 haven't really been in contact with her
20 over the years. Just hasn't been
21 finalized.
- 22 Q. When was the last time that y'all lived
23 together?

Page 12

- 1 Power. I got laid off in '04.
- 2 Q. Do you remember about what month that was?
- 3 A. January.
- 4 Q. January is not a good month for you, huh?
- 5 A. Well, you know, it was shutdown jobs.
6 Contract's up. Layoff time.
- 7 Q. How long did you work for Alabama Power?
- 8 A. I started December the previous year. That
9 would be '03, December '03.
- 10 Q. So that was only about a two-month temp
11 job? Is that about right?
- 12 A. Somewhere around there. I caught the end
13 part of the contract. I worked through my
14 uncle. He was the supervisor.
- 15 Q. Who was your uncle?
- 16 A. Curtis Marshall.
- 17 Q. Prior to December of '03, when was the last
18 time that you worked?
- 19 A. I have to say it would have to be Big Lots
20 in Montgomery. I think that's what ...
- 21 Q. When did you start working for Big Lots?
- 22 A. I would say September of '99.
- 23 Q. And you worked for them until when?

Page 13

- 1 A. I want to say November -- I think it was
2 November 2000, somewhere along in there.
3 Q. What did you do for Big Lots?
4 A. Forklift operator.
5 Q. Forklift operator?
6 A. Yeah.
7 Q. And what did you do for Alabama Power? Let
8 me go back to that.
9 A. I was a cement finisher helper. Mixed
10 mortar, poured concrete.
11 Q. And what did you get paid when you were at
12 Alabama Power?
13 A. I was making 15.50, something like that.
14 Q. What was your rate of pay at Big Lots?
15 A. Start pay was 7.50 and end off at like \$10.
16 Q. Have you ever owned your own business?
17 A. No, sir.
18 Q. Never been self-employed?
19 A. Not really. Well, I contract barber, a
20 trade of mine, hair cutting. But I never
21 owned my own business.
22 Q. When did you do that?
23 A. '93 out of high school a couple of years

Page 15

- 1 Lowndes County pretty much all your life.
2 How long have you lived at that address?
3 A. That's my mother's address. Most all my
4 life I stayed next door with my grandmother
5 most of my life until I moved out with a
6 friend or two.
7 Q. Where were you living in 2005?
8 A. Still Lowndes County off of Highway 21 with
9 a friend.
10 Q. The whole year?
11 A. Yeah. Yeah.
12 Q. What's the address at your grandmother's
13 house that you said is next door?
14 A. It's probably going to be -- Probably --
15 I'm not sure. The address has changed. It
16 used to be Route 2, Box 140, but I'm not
17 sure. I'm not sure right now. I know
18 that's the old address, Route 2, Box 140.
19 Q. Do you have any children, Mr. Marshall?
20 A. Yes.
21 Q. How many children do you have?
22 A. Two boys.
23 Q. Are any of them 19 or older?

Page 14

- 1 off and on.
2 Q. Did you graduate from high school?
3 A. Yes, sir.
4 Q. What high school did you graduate from?
5 A. Central High, Hayneville.
6 Q. What year did you graduate?
7 A. '92.
8 Q. Have you ever attended a college?
9 A. Briefly J.P. Tech for barbering. But I
10 found out I have to have a license to cut
11 hair. Went straight to the barber shop.
12 Q. And that was here in Montgomery; right?
13 A. Yeah.
14 Q. When did you attend J.P. Tech?
15 A. I think it was '93.
16 Q. Any other college or trade school that you
17 have?
18 A. No, sir.
19 Q. Now, you live at 64 Youngblood Road in
20 Farmersville; is that right?
21 A. Yes, sir.
22 Q. And how long did you tell me that you've
23 lived there? You said you've lived in

Page 16

- 1 A. No, sir.
2 Q. Do you have a lot of relatives in Lowndes
3 County?
4 A. Fairly, but not a lot. Close relatives.
5 MR. WILFORD: Jay, can we get a
6 stipulation, just for the
7 venire information, that he'll
8 give us a list of relatives in
9 the middle district?
10 MR. LEWIS: Sure.
11 MR. WILFORD: That will save us
12 some time.
13 Q. Are you a member of a trade union?
14 A. No, sir.
15 Q. Do you go to church?
16 A. I used to. I haven't been in a while.
17 Q. When you went to church, what church did
18 you attend?
19 A. First Baptist in Farmersville.
20 Q. Are you a member of any social
21 organizations like, you know, Elks, VFW,
22 anything like that?
23 A. No, sir.

Page 17

Page 19

- 1 Q. Other than this lawsuit that we're here on
 2 today, have you ever been a party in any
 3 other lawsuit either as a plaintiff or a
 4 defendant?
 5 A. No, sir.
 6 Q. So this is your first one?
 7 A. Yes.
 8 Q. We had asked you in the interrogatories if
 9 you had ever been arrested before, and you
 10 gave us three arrests; one in April 25th --
 11 25 of '97 in Butler County, the second one
 12 was the one that we're here -- I'm sorry --
 13 the second one was in '98 in Tuscaloosa,
 14 and the third one was the one that we're on
 15 here today. Do you have any other arrests
 16 besides those?
 17 A. No, sir.
 18 (Defendant's Exhibit 1 was marked
 19 for identification.)
 20 Q. Let me show you what I'm going to mark as
 21 Defendant's Exhibit 1. Let me give you
 22 just a minute to take a look at that,
 23 Mr. Marshall.

- 1 (Brief pause.)
 2 Q. Have you had a chance to take a look at
 3 that?
 4 A. Yeah.
 5 Q. Does that refresh your recollection as to
 6 any other arrests you might have had?
 7 A. Yeah. I forgot about that. Seat belt,
 8 whatever it was. I think it was June -- I
 9 want to say June.
 10 Q. June of this year?
 11 A. Yeah.
 12 Q. Were you actually incarcerated as a result
 13 of that arrest? Put in jail?
 14 A. Yeah. I was taken in for three days, but I
 15 got a chance to talk to the judge. It was
 16 a miss -- following the incident we're here
 17 now on. They suspended my license for a
 18 ticket that I already sat out while I was
 19 in there. She took the ticket up plus the
 20 ticket that they wrote me that day and
 21 released me.
 22 Q. So you spent two days in jail on this
 23 charge and then the judge dismissed all the

Page 18

Page 20

- 1 Q. Was it the DTF?
 2 A. Just a regular city cop, whatever.
 3 Q. City or county?
 4 A. County, city. I mean, I don't exactly know
 5 which one it was.
 6 Q. Do you remember what color uniform the
 7 officer wore?
 8 A. I want to say dark-colored, dark-colored
 9 uniforms. May be county. In a white
 10 vehicle.
 11 Q. All right. Other than this one and the
 12 three that you told us about in the
 13 interrogatories, any other arrests?
 14 A. No.
 15 Q. On the first arrest in April of '97, did
 16 you have to spend any time in jail on that
 17 one?
 18 A. '97, yeah.
 19 Q. How long did you spend in jail on that one?
 20 A. Approximately two or three weeks before the
 21 charge was dropped.
 22 Q. Do you know why the charges were dismissed?
 23 A. Yeah. It was bogus charges. It was a

Page 21

1 misunderstanding between me and my kids'
 2 mom. She went down there to make false
 3 statements about a vehicle we purchased
 4 together, and two or three weeks later she
 5 came to an agreement and dropped the
 6 charge.

7 Q. You say your kids' mom. Is that the lady
 8 that you're currently married to?

9 A. No, sir.

10 Q. What was that lady's name?

11 A. Which one?

12 Q. The mother of your children.

13 A. Shavonne Bailey.

14 Q. Do you know where she lives now?

15 A. Tuscaloosa.

16 Q. Was she the one that was involved in the
 17 arrest in Tuscaloosa in '98?

18 A. Yes, sir.

19 Q. Do you have an address on Ms. Bailey?

20 A. Not off the top of my head, but I have it.
 21 I have an address, but I don't know it by
 22 heart.

23 Q. Do you know her phone number?

Page 23

1 A. Yes, sir.

2 Q. Any other times that you've been in jail
 3 that we haven't talked about?

4 A. No, sir.

5 Q. Have you ever been treated for alcohol or
 6 drug addiction?

7 A. No, sir.

8 Q. Ever been treated for mental illness?

9 A. No, sir.

10 Q. All right. Let me draw your attention to
 11 the day that this incident that this
 12 lawsuit is about occurred. Would you agree
 13 with me that that was June 28th of 2005?

14 A. I would agree.

15 Q. Do you recall what day of the week that
 16 was?

17 A. I think it was Tuesday.

18 Q. You weren't employed on June 28th of '05,
 19 were you?

20 A. No, sir.

21 Q. What did you have to do that day, if
 22 anything?

23 A. Early that morning I went to my aunt's

Page 22

1 A. I don't know it by heart either.

2 Q. When was the last time you talked to her?

3 A. Last month.

4 Q. Did you spend any time in jail in
 5 Tuscaloosa?

6 A. Overnight.

7 Q. Just overnight?

8 A. Yeah.

9 Q. That was in Tuscaloosa City Jail?

10 A. Yeah.

11 Q. Or the county jail?

12 A. I'm not sure. I'd have to look at the
 13 paper and see. It's been a while.

14 Q. The arrest in Butler County, were you in
 15 the Butler County Jail? It says you were
 16 arrested by the Butler City Police
 17 Department.

18 A. Well, they only have one jail. I don't
 19 know whether it's under the city or the
 20 county. It's the only one they have --
 21 still have.

22 Q. All right. And you've been in the Lowndes
 23 County jail twice; is that correct?

Page 24

1 house and we pulled the motor and
 2 transmission out of a vehicle.

3 Q. You said we. Who is we?

4 A. Me and Kevin and two more cousins.

5 Q. Kevin Carmichael?

6 A. Yes, sir.

7 Q. Who were the other two cousins?

8 A. Darrell Howard, Charles Howard.

9 Q. And you said you were pulling a motor out
 10 of a car?

11 A. Yeah.

12 Q. Was it your aunt's car?

13 A. No. It was my cousin's car.

14 Q. Were you being paid to do that?

15 A. No.

16 Q. What time did you get up to go pull that
 17 motor?

18 A. Probably about eight o'clock.

19 Q. Did you have anything to eat when you woke
 20 up?

21 A. No, sir.

22 Q. Just went straight over there and started
 23 working on a motor?

<p style="text-align: right;">Page 25</p> <p>1 A. (Witness nods head).</p> <p>2 Q. Did y'all eat anything while you were over 3 there?</p> <p>4 A. No, sir.</p> <p>5 Q. Did you have anything alcoholic to drink 6 while y'all were working on that motor?</p> <p>7 A. No, sir.</p> <p>8 Q. Take any drugs that day?</p> <p>9 A. No, sir.</p> <p>10 Q. Prescription drugs?</p> <p>11 A. No drugs.</p> <p>12 Q. Where is your aunt's house at?</p> <p>13 A. It's in Farmersville also.</p> <p>14 Q. What's the address there?</p> <p>15 A. I don't know the address right off the top 16 of my head.</p> <p>17 Q. How far is it from your house?</p> <p>18 A. Approximately a mile.</p> <p>19 Q. So did you get that motor out that day?</p> <p>20 A. Yes, sir.</p> <p>21 Q. How were you dressed?</p> <p>22 A. T-shirt and shorts.</p> <p>23 Q. Pretty hot that day?</p>	<p style="text-align: right;">Page 27</p> <p>1 A. They was at their house where we took it out. That's his mother.</p> <p>2 Q. So they didn't go anywhere?</p> <p>3 A. They were home already.</p> <p>4 Q. Did you have any plans for the rest of the 5 day other than just going home?</p> <p>6 A. No plans.</p> <p>7 Q. Was there anybody in the car with you when 8 you went home?</p> <p>9 A. Kevin Carmichael.</p> <p>10 Q. Did you stop anywhere between your aunt's 11 house and where your encounter with the 12 defendants began?</p> <p>13 A. No, sir.</p> <p>14 Q. Can you describe for me the vehicle that 15 you were in?</p> <p>16 A. 1971 blue Nova.</p> <p>17 Q. '71?</p> <p>18 A. Yes, sir.</p> <p>19 Q. That's a Chevrolet; right?</p> <p>20 A. Yes.</p> <p>21 Q. Was that your car?</p> <p>22 A. Yes.</p>
<p style="text-align: right;">Page 26</p> <p>1 A. Yeah. It was a pretty hot summer. It was 2 warm that day.</p> <p>3 Q. How long did it take y'all to get that 4 motor out?</p> <p>5 A. I think we finished up sometime between 6 11:30 -- sometime before noon.</p> <p>7 Q. What were you going to do after that?</p> <p>8 A. Go home and take a bath and get some rest.</p> <p>9 Q. And was that -- When you say going home, 10 was that the 64 Youngblood Road address?</p> <p>11 A. No. That's the residence off of 21 where I 12 was residing at the time.</p> <p>13 Q. Off of Highway 21?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Is that on County Road 7?</p> <p>16 A. Off of County Road 7, right off of the 17 State Highway 21.</p> <p>18 Q. Is that at the intersection of County Road 19 7 and Highway 21?</p> <p>20 A. Yeah.</p> <p>21 Q. Where did Mr. Howard -- well, the two 22 Mr. Howards, Darrell and Charles, go after 23 y'all got done with that engine?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. How long had you had that car?</p> <p>2 A. I think I purchased it in July of '04. 3 (Defendant's Exhibit 2 was marked 4 for identification.)</p> <p>5 Q. Let me show you what we'll mark as 6 Defendant's Exhibit 2 after your attorneys 7 get a chance to look at it. Is that your 8 car?</p> <p>9 A. That's my car.</p> <p>10 Q. That's in Defendant's Exhibit 2?</p> <p>11 A. That's it.</p> <p>12 Q. Who all besides you had access to that car?</p> <p>13 A. No one.</p> <p>14 Q. So you had the only set of keys; correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Had you loaned it to anyone recently?</p> <p>17 A. No, sir.</p> <p>18 Q. I'm sorry?</p> <p>19 A. No, sir.</p> <p>20 Q. Was that car equipped with seat belts?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Were you wearing your seat belt that day?</p> <p>23 A. No, sir.</p>

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- 1 Q. What about Kevin, was he wearing his?
 2 A. No.
 3 Q. Was there any alcohol in that car?
 4 A. No, sir.
 5 (Defendant's Exhibit 3 was marked
 6 for identification.)
 7 Q. Let me show you what we're going to mark as
 8 Defendant's Exhibit 3. Let me ask you,
 9 does that look like the front seat of your
 10 car on June 28th, 2005, Defendant's Exhibit
 11 3?
 12 A. That's it.
 13 Q. Fairly and accurately depict what was on
 14 the front seat of your car that day?
 15 A. Yes, sir.
 16 Q. What was in that flask that's there on the
 17 seat next to the gun?
 18 A. At one time it had contained alcohol, but
 19 it was no alcohol in it that day.
 20 Q. Well, what was in it when it was -- What
 21 was the alcohol that was in there?
 22 A. Vodka.
 23 Q. When did you drink that -- or did you --

- 1 and his books. And I give him a ride home
 2 right before dark. It started raining even
 3 harder before we got there. When I pulled
 4 up in his driveway, he jumped out of the
 5 car and left the gun.
 6 Q. How long ago before -- Let me back up and
 7 regroup. How long before June 28th, 2005
 8 did you give Mr. McWilliams a ride?
 9 A. Approximately three or four days earlier
 10 than that.
 11 Q. Where does Mr. McWilliams live?
 12 A. Right off of Highway 21.
 13 Q. Do you know the address?
 14 A. Not right offhand.
 15 Q. How far is it from your house?
 16 A. Approximately three or four miles.
 17 (Defendant's Exhibit 4 was marked
 18 for identification.)
 19 Q. Let me show you what we'll mark as
 20 Defendant's Exhibit 4. Does that look like
 21 the ashtray that was in your Nova?
 22 A. It is.
 23 Q. And you can see in there there's some

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- 1 let me back up. Did you drink that?
 2 A. It's been in there for some while.
 3 Probably a week prior when I had a drink.
 4 Q. So you had emptied it about a week prior;
 5 is that right?
 6 A. Yeah.
 7 Q. Now, Defendant's Exhibit 3 also has a gun
 8 in that picture; correct?
 9 A. Uh-huh (positive response).
 10 Q. Was that your gun?
 11 A. No, sir.
 12 Q. But you knew it was in the car that day;
 13 right?
 14 A. Yes, sir.
 15 Q. Whose gun is it?
 16 A. It belongs to D.C. McWilliams.
 17 Q. Who is D.C. McWilliams?
 18 A. A friend of mine.
 19 Q. How did it get in the car?
 20 A. Well, he left it in there. One day I give
 21 him a ride when he was having car trouble.
 22 It was starting to rain. He came along and
 23 said he wanted to go back and get his gun

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- 1 bullets in there; right?
 2 A. Yes, sir.
 3 Q. Why were those bullets in your ashtray?
 4 A. Like I said, he left the box of bullets in
 5 there which had got wet from the rain. The
 6 box was deteriorating, therefore tearing
 7 up. So I took the bullets, put them in the
 8 ashtray. And there probably was some on
 9 the seat also because all of them couldn't
 10 fit in there.
 11 Q. If you look back at Defendant's 3,
 12 I believe it is, I think you're right.
 13 There is a bullet lying there on the seat,
 14 isn't there?
 15 A. Yeah.
 16 Q. So he left the gun and a box of bullets in
 17 your car?
 18 A. Yes, sir.
 19 Q. And he left it there for three to four
 20 days?
 21 A. That's approximately how long it was.
 22 Q. Had he tried to get ahold of you to get his
 23 gun and his bullets back prior to that

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- 1 time?
- 2 A. He may have, but I was in and out of my
3 residence probably and missed him. I even
4 called him, but I couldn't get up with him.
- 5 Q. Does Mr. McWilliams still live there off
6 Highway 21?
- 7 A. I'm certain he does.
- 8 Q. Did you have a concealed weapon permit?
- 9 A. No, sir.
- 10 Q. Had you ever had a concealed weapon permit?
- 11 A. No, sir.
- 12 Q. How much money did you have on you that
13 day?
- 14 A. 500.
- 15 Q. Exactly 500?
- 16 A. Yes, sir.
- 17 Q. In what denomination were the bills?
- 18 A. I know two \$100 bills and the rest were
19 twenties.
- 20 Q. Where did that money come from?
- 21 A. I previously was drawing unemployment when
22 I got laid off from one job and I saved
23 money. And during that time I was having a

- 1 Q. Did you report those winnings on your
2 income tax?
- 3 A. I took a waiver out -- tax waiver out each
4 time.
- 5 Q. Tax waiver. You have to explain that to me
6 because I'm not a gambler.
- 7 A. When you have to sign to have your taxes
8 taken out of winnings to report your W-2s
9 from the casino.
- 10 Q. Right. Okay. But when you filed your
11 income tax at the end of the year, did you
12 report that income?
- 13 A. I haven't filed but once since '05. I
14 think child support ended up being on
15 that. I'm not sure if I had it in there or
16 not.
- 17 Q. Where was that money at?
- 18 A. What money?
- 19 Q. The \$500 that we're talking about. That's
20 a good point. When I ask a bad question,
21 you go right ahead and ask me to clarify.
22 I'm talking about the \$500 now. Where did
23 you have that at?

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- 1 fairly decent streak at the gambling
2 casinos. During the time I won a
3 substantial amount of money.
- 4 Q. Which casino?
- 5 A. White Hall Gaming Casino. Also Biloxi,
6 Mississippi I won some money.
- 7 Q. Which casino in Biloxi?
- 8 A. I'm not sure right offhand. I'd have to
9 check receipts or something. I don't want
10 to say the wrong one.
- 11 Q. When did you win that money?
- 12 A. I won the money in Mississippi in '04. The
13 month I'm not exactly -- I'm not sure of
14 the month. I won money in White Hall in
15 '05, March.
- 16 Q. Well, how much did you win in Biloxi?
- 17 A. About 1600.
- 18 Q. And how much at White Hall?
- 19 A. 3600.
- 20 Q. And you're saying that this money was
21 left -- what was left of your winnings? Am
22 I understanding you correctly?
- 23 A. Yeah.
- 1 A. In my short right-hand pocket.
- 2 Q. Was it in a wallet, or how were you
3 carrying it?
- 4 A. Just together folded.
- 5 Q. When was the first time that you remember
6 seeing the two officers that you ran into
7 later that day?
- 8 A. The first time that I seen two unknown
9 persons was on County Road 7 immediately
10 coming from my aunt's house.
- 11 Q. That's good. Let's back up and regroup on
12 that just a minute. Did you turn off of
13 Highway 21 going down County Road 7 to your
14 house?
- 15 A. I turned off of Highway 16 onto County Road
16 7 where I met the officers.
(Defendant's Exhibit 5 was marked
17 for identification.)
- 18 Q. Just so I'm clear, I'm going to show you
19 what we're going to mark as Defendant's
20 Exhibit 5, which I'll tell you is just a
21 little map that I got off the Internet of
22 the area. Kind of centered in it is County

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1 Road 7 and Highway 21 and we'll just kind
 2 of refer to that. Now, you said you came
 3 off -- was it County Road 16 and onto --
 4 I'm sorry. Let me move all this stuff out
 5 of your way. I don't see County Road 16 on
 6 that map, and I might not have it zoomed in
 7 in enough detail.

8 A. Well, it's -- the road coming from
 9 Farmersville I think leads to be County
 10 Road 16 and then you make a right on County
 11 Road 7.

12 Q. There's Farmersville right there. So does
 13 County Road 16 kind of come --

14 A. Yeah. And you make a right onto County
 15 Road 7. Then you make another right on
 16 Highway 21.

17 Q. I tell you what. Let me give you my pen
 18 here and if you would just kind of draw a
 19 little line there from that dot under
 20 Farmersville. Just your best guess at how
 21 County Road 16 goes into County Road 7.

22 A. It would have to be coming from this
 23 direction and make a right on County Road

1 that.

2 A. (Witness complies).

3 Q. All right. So make sure I understand what
 4 you're telling me. You left Farmersville
 5 where your aunt's house was?

6 A. Yes, sir.

7 Q. Traveled down County Road 16?

8 A. Uh-huh (positive response).

9 Q. Took a right on County Road 7 from County
 10 Road 16?

11 A. (Witness nods head).

12 Q. Where did you first see who you later
 13 learned to be the defendants in this case?

14 A. Approximately a quarter mile after turning
 15 on County Road 7 I met a dark-colored
 16 Lincoln Town Car, who I first thought was a
 17 drunken driver or something that slowed
 18 down, hit the brakes hard. And I didn't
 19 know who it was, so I kept driving.

20 Q. Okay. There's a whole bunch of things I
 21 need to ask you about there. You said it
 22 was a dark-colored Lincoln Town Car?

23 A. Yes, sir.

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1 7.

2 Q. Just draw that to where it intersects into
 3 County Road 7. Just make your line go into
 4 County Road 7.

5 A. (Witness complies).

6 Q. There we go. That's good. And if you
 7 would, just put a 16 under that so we'll
 8 know what we're talking about.

9 A. (Witness complies).

10 Q. All right. Now, if you would on here just
 11 put a little X about where your house was
 12 back in June of '05.

13 A. The residence where I was going to?

14 Q. Yes, sir.

15 A. Well, it's off of Highway 21. Braggs.
 16 This is 263 exit. I stayed approximately a
 17 mile or two, three miles from the 263
 18 exit. So I would have to say somewhere in
 19 here approximately.

20 Q. Can you put a little bit larger X so when
 21 we copy that?

22 A. (Witness complies).

23 Q. And if you would, just write home under

1 Q. Had you ever seen that car before?

2 A. No, sir.

3 Q. Did it have any distinguishing features on
 4 it, like a license plate on the front or
 5 anything that stood out in your mind?

6 A. Didn't even pay it no attention. Wasn't
 7 registering in my mind. Just another
 8 vehicle.

9 Q. Had you passed any vehicles on County Road
 10 7 prior to seeing that dark-colored
 11 Lincoln?

12 A. No, sir. That's the first vehicle I saw.

13 Q. Had you passed any on County Road 16?

14 A. No, sir.

15 Q. So you're all alone on a road there?

16 A. Yes, sir.

17 Q. All right. You also said that you thought
 18 it was a drunk driver. What made you think
 19 it was a drunk driver?

20 A. Because immediately upon meeting the car
 21 the car slammed on brakes and took a nose
 22 dive, and I thought that to be strange at
 23 the time. Looked in my rear view mirror,

	Page 41	Page 43
1	saw that the car was veering off to the	1 of him.
2	side of the road. So I thought maybe they	2 Q. Did you know he worked with the drug task
3	had a flat or something, so I kept driving.	3 force?
4	Q. You didn't see it swerving in the road as	4 A. No, sir.
5	it was coming towards you; right?	5 Q. Other than slamming on the brakes and
6	A. No, sir.	6 veering off the road, did they do anything
7	Q. So the only thing that made you think it	7 else unusual?
8	was a drunk driver was it slammed on the	8 A. That's all I know is right then.
9	brakes and then veered off the road?	9 Q. You say right then. Did they do anything
10	A. Yes, sir.	10 else after that?
11	Q. Did you get a look at who was in the	11 A. Yeah. Next thing I know is they was upside
12	vehicle as it went by you?	12 my car.
13	A. No, sir.	13 Q. So from the time -- Let me make sure I got
14	Q. County Road 7 where you encountered this	14 your testimony right. From the time you
15	dark-colored Lincoln, is that a two-lane	15 saw them slam on brakes and veer off the
16	road?	16 road until they were next to you, you
17	A. It's a small rural road, one lane.	17 didn't see them. Is that what you're
18	Q. One lane in each direction?	18 telling me?
19	A. Yeah. One lane in each direction.	19 A. Yes, sir.
20	Q. Did you see any kind of blue lights on the	20 Q. Were there any cars coming behind that
21	vehicle when it went by you?	21 Lincoln that you saw?
22	A. There was no lights.	22 A. No, sir.
23	Q. When you say no lights, no blue lights?	23 Q. Okay. Now, you said they came alongside of
1	A. Right.	you. How did they do that? Describe that
2	Q. It had headlights; right?	for me.
3	A. I'm certain it did.	3 A. After seeing the car slam on brakes and,
4	Q. Had you ever seen Chris West before that	4 like I said, I looked in my back mirror and
5	day?	5 saw them veer off. I kept driving. Didn't
6	A. No, sir.	6 know what was happening. Approximately 30
7	Q. How about LaShun Hutson, had you ever seen	7 seconds to a minute later they had pulled
8	him before that day?	8 up beside me in the passing lane. All I
9	A. No, sir.	9 saw was two black males in black T-shirts
10	Q. Did you know of them?	10 trying to flag me to pull over on first
11	A. I never knew of Shawn Hutson, but I have	11 glance.
12	heard Chris West's name.	12 Q. You said trying to flag you. What were
13	Q. You'd heard Chris West's name prior to the	13 they doing?
14	28th of June of '05?	14 A. I just seen the hand signal (indicating)
15	A. Yes, sir.	15 and pull over.
16	Q. What did you know about Chris West prior to	16 Q. Was there anything -- Let me back up. Who
17	June 28 of '05?	17 was doing the hand signal? Was it the
18	A. Only that he was a law enforcement officer.	18 passenger or the driver?
19	Q. Do you remember who you heard that from or	19 A. Passenger.
20	how you heard it?	20 Q. And just kind of describe what you did a
21	A. No, sir. Just open conversation.	21 second ago. For the record you were using
22	Q. Do you know who might have told you that?	22 your right hand and kind of pushing at
23	A. No one told me. Just heard it. Just heard	23 shoulder level off to the side?

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- 1 A. Yes, sir.
 2 Q. Did you later learn who the passenger was
 3 that was giving you the hand signal?
 4 A. I believe it was Shawn Hutson.
 5 Q. So Chris West was driving; is that right?
 6 A. I think he was. Had to be.
 7 Q. Was there anybody else in the car besides
 8 those two?
 9 A. No, sir.
 10 Q. Was your window up or down in your car?
 11 A. Down.
 12 Q. Does the air conditioning work in that car?
 13 A. No, sir.
 14 Q. So you had 2 by 55 air conditioning?
 15 A. I mean, wind?
 16 Q. Yeah.
 17 A. Yeah. That's it.
 18 Q. And I'm just going to start referring to
 19 them by name now. We know that based on
 20 your testimony Shawn was the passenger and
 21 Chris was the driver. Did Shawn say
 22 anything to you when he was initially
 23 giving you that hand signal?

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- 1 A. I really couldn't hear if he had said
 2 anything anyway. As you can see in my
 3 trunk, I had amplifiers and music that was
 4 blasting during the time. I was driving
 5 35, 40 miles per hour. All I could really
 6 see was a hand signal.
 7 Q. Well, did it look like he was trying to say
 8 something?
 9 A. I can't recollect. I can't say that
 10 because it happened so quick. Just a brief
 11 glance and that's all I looked over there.
 12 Q. Let me back up and ask you something here.
 13 In paragraph 16 of your amended complaint
 14 you alleged that you've been robbed
 15 before.
 16 A. Yes, sir.
 17 Q. How many times had you been robbed before?
 18 A. Once.
 19 Q. When was that?
 20 A. August '03.
 21 Q. Where was it?
 22 A. In Montgomery.
 23 Q. What happened?

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- 1 A. I was at the hotel, Peddler's Inn, and I
 2 had a guy pull a gun on me and demanded
 3 money.
 4 Q. Were you in a car or were you just
 5 walking? Where were you?
 6 A. Coming out my room -- hotel room.
 7 Q. Did he get any money off of you?
 8 A. He took some money.
 9 Q. Did you report it to the police?
 10 A. Yeah. I went in for questioning and made a
 11 statement.
 12 Q. Did they ever catch the guy who did it?
 13 A. Yes.
 14 Q. What was his name?
 15 A. I want to say Jerome Titus.
 16 Q. What happened with Mr. Titus?
 17 A. I guess they prosecuted him or whatever. I
 18 don't know the full extent.
 19 Q. Did you ever have to testify at trial?
 20 A. No. I got a letter from the DA, Ellen
 21 Brooks, saying it wasn't enough evidence or
 22 something. I don't know. It was
 23 dismissed.

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- 1 Q. So he wasn't convicted?
 2 A. Not to my knowledge.
 3 Q. All right. So that was the only time that
 4 you were robbed previously?
 5 A. Yes, sir.
 6 Q. Have you been robbed since?
 7 A. No, sir.
 8 Q. All right. So we got to the point where
 9 their car -- are they about even with you
 10 going down County Road 7?
 11 A. Yeah. They pulled right up beside me.
 12 Q. Going about 35, 40 miles an hour; is that
 13 right?
 14 A. Yeah. I wasn't driving fast.
 15 Q. What's the speed limit there?
 16 A. Approximately 45, 50 maybe, anywhere in
 17 that range.
 18 Q. About how long did they stay alongside of
 19 you like that?
 20 A. Approximately 10 seconds.
 21 Q. What did they do after that 10 seconds?
 22 A. They veered behind me and trailed me out to
 23 Highway 21.

Deposition of Richard Marshall

November 14, 2007

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1	Q. Did they try to come up alongside of you again prior to getting to Highway 21?	1	A. I turned right. Turned going toward my residence.
2	A. No, sir.	2	Q. Turned right going towards your house?
3	Q. Did you look at them in your rear view mirror?	3	A. Yes, sir.
4	A. I took a glance in my rear view mirror and noticed that they was riding my bumper.	4	Q. Which I guess on this map takes us back to the west; is that right? I think this is west over here on the left-hand side.
5	Q. Did you see a blue light at that time?	5	A. I don't know if it's west or not. All I knew --
6	A. There was no blue light.	6	Q. Kind of southwest really?
7	Q. Could you see what the two occupants of the car were doing in your rear view mirror?	7	A. I turned right on Highway 21.
8	A. No, sir. I didn't glance. Just quick glance to see that they was still behind me.	8	Q. We'll go with that. You turned right on Highway 21 heading towards your house. Is there a stop sign there at 7 and 21?
9	Q. Let me back up for just a second. When they were alongside of you here this first time, did you say anything to them?	9	A. Caution light, yield sign.
10	A. On first glance when they pulled up, yeah, I may have said -- asked them what they want, not in that nice a way, though.	10	Q. A yield sign?
11	Q. Not in a nice way?	11	A. Uh-huh (positive response).
12	A. Yeah. Not in a nice way.	12	Q. Was there any traffic coming on Highway 21?
13	Q. Can you tell me exactly what you said?	13	A. No, sir. I didn't see any traffic.
14		14	Q. Either way?
15		15	A. No, sir.
16		16	Q. What is Highway 21? Is it another two-lane, one lane each way, or is it
17		23	
	Page 50		Page 52
1	A. What the fuck y'all want.	1	four-lane?
2	Q. Did you think to turn the stereo down?	2	A. Two-lane, one lane each way. State highway.
3	A. No. Because it was my first understanding that it was somebody trying to rob me and I'm not going to be courteous to them.	3	Q. Did you stop at the intersection of 7 and 21?
4	Q. So you couldn't hear what they were saying to you; right?	4	A. Brief caution, brake in the road at the yield sign and proceeded to go right toward my residence.
5	A. No, sir.	5	Q. Kind of a rolling stop?
6	Q. And you asked them what you asked them?	6	A. Yeah. Rolling stop.
7	A. Yes, sir.	7	Q. Wheels never really came to a complete rest?
8	Q. And the stereo is still going the whole time?	8	A. No, sir.
9	A. Yes, sir.	9	Q. And you took the right going onto Highway 21?
10	Q. Did it look like either one of them responded when you asked them that question?	10	A. Yes, sir.
11	A. No, sir.	11	Q. What did the Lincoln do?
12	Q. Because you just glanced at them real quick; right?	12	A. Still behind me.
13	A. Yes, sir.	13	Q. It followed you out on Highway 21?
14	Q. All right. They trailed you all the way up to Highway 21; correct?	14	A. Yes, sir.
15	A. Yes, sir.	15	Q. Did you get a chance to look in your rear view mirror as you were going down 21?
16	Q. What did you do when you got to Highway 21?	16	A. Well, right after turning on Highway 21 the

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<p>1 vehicle pulled up beside me again.</p> <p>2 Q. So up again on the left-hand side of your</p> <p>3 vehicle coming in the oncoming traffic</p> <p>4 lane; is that right?</p> <p>5 A. Yes, sir.</p> <p>6 Q. How fast were you going at that time?</p> <p>7 A. Approximately 55, somewhere around there.</p> <p>8 Q. What's the speed limit on Highway 21?</p> <p>9 A. I'm quite sure it's 55.</p> <p>10 Q. And I should have asked you this before.</p> <p>11 The rest of the time that you were on</p> <p>12 County Road 7, did you stay going 35, 40</p> <p>13 miles an hour?</p> <p>14 A. Around 35, 40 miles an hour. Because they</p> <p>15 were bumper to bumper on me.</p> <p>16 Q. So you sped up a little bit?</p> <p>17 A. It was a wavy road, so I really didn't want</p> <p>18 to travel fast.</p> <p>19 Q. Well, you did speed up a little if you got</p> <p>20 up to 45; right?</p> <p>21 A. Well, like I said, I was driving around 35</p> <p>22 to 45 on County Road 7.</p> <p>23 Q. Well, were you trying to get them off your</p>	<p>1 Q. Did you see anything besides the weapon?</p> <p>2 A. No, sir. I just seen the right hand.</p> <p>3 Q. I'm sorry?</p> <p>4 A. I just saw his right hand gesturing and I</p> <p>5 just kept driving.</p> <p>6 Q. Is that the only hand he had in view?</p> <p>7 A. That's the only hand I saw.</p> <p>8 Q. Did he say anything to you?</p> <p>9 A. I didn't hear him say anything if he did</p> <p>10 for the music.</p> <p>11 Q. You still had the music going?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Could you tell that he was trying to say</p> <p>14 anything to you? Could you see his lips</p> <p>15 moving?</p> <p>16 A. I didn't have time to just lock on to what</p> <p>17 he was saying, lips moving, because I'm</p> <p>18 watching traffic and watch the incident.</p> <p>19 All I did is glance. When the car pulled</p> <p>20 up beside me, I glanced, put my eyes back</p> <p>21 on the highway and kept driving.</p> <p>22 Q. You just said watching traffic. Are there</p> <p>23 cars coming now?</p>
Page 54	Page 56
<p>1 bumper at all?</p> <p>2 A. I wasn't trying to because I knew I</p> <p>3 couldn't. They was trailing my bumper.</p> <p>4 And like I said, it was a wavy road. I</p> <p>5 didn't want to hurt myself.</p> <p>6 Q. So you turned onto Highway 21 and they came</p> <p>7 up alongside of you. What happened when</p> <p>8 they came alongside of you?</p> <p>9 A. They came alongside me and I saw the same</p> <p>10 thing again, hand motion and I glanced and</p> <p>11 kept driving.</p> <p>12 Q. Was there anything in -- And you said the</p> <p>13 hand motion. Was that the passenger again,</p> <p>14 Shawn?</p> <p>15 A. Yes.</p> <p>16 Q. Could you see anything that Chris might be</p> <p>17 doing?</p> <p>18 A. I didn't have time to just lock in on him.</p> <p>19 Q. Did Shawn have anything in his hands this</p> <p>20 time when they pulled up alongside of you</p> <p>21 on 21?</p> <p>22 A. On second glance it appeared to be a weapon</p> <p>23 at a glance and kept driving.</p>	<p>1 A. No cars coming, but I'm looking for a car.</p> <p>2 Q. So still y'all are the only two vehicles on</p> <p>3 the road?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Describe that weapon that you saw for me.</p> <p>6 A. I can't describe it. All I know is I saw a</p> <p>7 weapon. I don't know what brand --</p> <p>8 Q. Was it a knife? A gun?</p> <p>9 A. A gun, yeah. A gun.</p> <p>10 Q. Was it black? Shiny?</p> <p>11 A. It was black.</p> <p>12 Q. Big gun? Little gun?</p> <p>13 A. I don't know. I can't lock in on the</p> <p>14 size. I glanced at the weapon I saw.</p> <p>15 Q. Was it pointed at you?</p> <p>16 A. I can't say that it was pointed at me. All</p> <p>17 I seen was a hand gesture going like to</p> <p>18 pull over or whatever.</p> <p>19 Q. He was gesturing with the gun?</p> <p>20 A. That's what I saw.</p> <p>21 Q. Did you say anything to him?</p> <p>22 A. I didn't say anything else. I was still</p> <p>23 just driving.</p>

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- 1 Q. While all this was going on up to this
2 point, what's Kevin doing?
3 A. Sitting in the seat asking me, Cuz, who is
4 this trying to run us off the road? I tell
5 him I don't know; looks like somebody
6 trying to rob us; I'm not going to stop.
7 He was scared.
8 Q. Well, I understand that you were driving
9 the vehicle. Was he watching them?
10 A. He wasn't watching them. He was just aware
11 of what was going on.
12 Q. Did he tell you at some point that the
13 police were behind you?
14 A. He didn't tell me that.
15 Q. He did not tell you that?
16 A. No, sir.
17 Q. Well, did he ever tell you to pull over at
18 any time?
19 A. He didn't tell me to pull over. He's
20 asking me who is this and what they trying
21 to do. He just said, it looked like
22 they're going to run us off the road and
23 kill us if we don't pull over.

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- 1 we already had been spun off the road
2 before we realized who it was.
3 Q. Now, you still had the music going pretty
4 good at that time?
5 A. The music was going until Chris West turned
6 it off.
7 Q. Is it possible that you just didn't hear
8 what Kevin was saying to you because of the
9 music?
10 A. It's possible.
11 Q. All right. How long did they stay up
12 alongside of you the second time?
13 A. Still approximately 10 seconds.
14 Q. Did you see a blue light this time?
15 A. I didn't see a light.
16 Q. Did you see a badge?
17 A. I didn't see a badge either.
18 Q. And you told me before that they were
19 wearing black T-shirts. Did those black
20 T-shirts have any writing on them?
21 A. Not that I can recollect. I just seen it
22 was black T-shirts.
23 Q. What did they do after that 10 seconds of

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- 1 (Defendant's Exhibit 6 was marked
2 for identification.)
3 Q. Let me show you what we'll mark as
4 Defendant's Exhibit 6. Let me give you
5 just a minute to look at Defendant's
6 Exhibit 6.
7 (Brief pause.)
8 Q. Had you ever seen that document before
9 today, Mr. Marshall?
10 A. I have.
11 Q. When did you get a chance to see that
12 document?
13 A. When we turned the information over.
14 Q. Those initial disclosures; is that right?
15 A. Yeah.
16 Q. Now, this is a statement that Kevin gave to
17 the police that day. And in it he says
18 that he saw that it was the police and he
19 advised you to pull over. Is it your
20 testimony that he didn't tell you to pull
21 over?
22 A. He didn't tell me to pull over, because by
23 the time we both realized it was the police

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- 1 being alongside of you?
2 A. Veered back behind me and trailed me
3 approximately another mile and a half or
4 two and they started to ram the vehicle.
5 Q. Between the time that they pulled back
6 behind you and as you described the ramming
7 started, did you get a chance to look in
8 your rear view mirror at them?
9 A. I didn't look in the mirror.
10 Q. You didn't look again?
11 A. (Witness shakes head).
12 Q. So you couldn't see anything that they were
13 doing back there?
14 A. I don't know what they was doing.
15 Q. Let me back up again to the second time
16 they were beside you. I might have asked
17 you this before. If I did, I apologize.
18 Did you say anything to the passenger that
19 second time?
20 A. No, sir.
21 Q. Make any motions to him?
22 A. I don't remember making any motions. I
23 just remember glancing at him and keep

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1 driving.
 2 Q. While all this was going on, where was this
 3 gun that's in Defendant's 3?
 4 A. Laying on the seat.
 5 Q. About where it is in Defendant's 3?
 6 A. Approximately somewhere.
 7 Q. Let me show it to you again. And is
 8 that -- you can see in the left-hand side,
 9 is that the steering wheel?
 10 A. Yes, sir.
 11 Q. So it's -- is it fair to say that it's
 12 fairly close to the driver?
 13 A. Yes, sir.
 14 Q. Was that gun just out in the open like
 15 that, or was it tucked up under you
 16 somehow? How was that gun?
 17 A. It was down between the seat.
 18 Q. What do you mean down between the seat?
 19 A. Approximately somewhere around here where
 20 it wouldn't be sliding. It was laying
 21 there.
 22 Q. You're pointing to the right-hand side what
 23 looks like seat belts. Are those seat

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1 Q. At any time during this pursuit did you
 2 pick that gun up?
 3 A. No, sir.
 4 Q. So it's just there kind of tucked down in
 5 the seat?
 6 A. Yeah. Until they was ramming. It probably
 7 was moving when they was ramming the
 8 vehicle. That's probably about the only
 9 time I probably touched it.
 10 Q. Did the gun move at any time during the
 11 pursuit? Did it stay here until the
 12 ramming started?
 13 A. I'm quite sure it did. But when they was
 14 ramming the car, my head was jerking. I'm
 15 quite sure it was moving along with
 16 everything else on the seat.
 17 Q. Let's talk about the ramming. Describe for
 18 me what you mean when you say they rammed
 19 you.
 20 A. Like I say, after they pulled beside me for
 21 the second time, they veered back behind me
 22 approximately a mile and they started
 23 hitting -- hitting the back end of my

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1 belts there?
 2 A. Yeah.
 3 Q. Those little black things on the right-hand
 4 side?
 5 A. Uh-huh (positive response).
 6 Q. So was it -- How was it in there? You've
 7 got it barrel down. Describe for me how
 8 it's in between the seats there.
 9 A. I'm certain the barrel was in there so it
 10 wouldn't be moving pointing toward the --
 11 back in the seat.
 12 Q. Did you touch the gun at any time while
 13 this pursuit was going on?
 14 A. I don't know. I probably touched it if it
 15 was moving or whatever, but I didn't reach
 16 for it or nothing.
 17 Q. Was the gun loaded?
 18 A. Yes, sir.
 19 Q. What kind of gun is that?
 20 A. .357.
 21 Q. Do you know what kind of bullets were in
 22 it?
 23 A. .357 hollow points.

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1 vehicle like two or three times. Each time
 2 it was knocking the car in a wiggling
 3 motion off the highway.
 4 Q. How fast were you going at that point?
 5 A. Initially I probably was going about 55
 6 until they started ramming me and I was
 7 losing control of the car and I slowed down
 8 approximately about 35, 40 miles an hour
 9 because I didn't want the car to flip out
 10 of control.
 11 Q. What part of their car was striking your
 12 car?
 13 A. I would have to say their bumper to
 14 bumper. I wasn't aware of the ramming
 15 until I was hit.
 16 Q. Okay. Was it -- And when you say ramming,
 17 were they hitting you center on; or were
 18 they off to one side or the other? How was
 19 that?
 20 A. They were hitting me center on up until the
 21 point where they spinned me out. And
 22 that's when they hit me on the driver's
 23 side bumper and spinned me out of control.

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1	MR. WILFORD: Let's take a quick	1 car after the first hit, what, if anything,
2	break. We've been going for	2 did you do?
3	an hour.	3 A. Continued to drive.
4	(Brief recess was taken.)	4 Q. Did you slow down or speed up?
5	Q. Okay. When we broke, Mr. Marshall, we were	5 A. Yeah. I slowed down.
6	talking about the ramming had begun. About	6 Q. How slow did you get down to?
7	how many times did the Lincoln come into	7 A. Probably I want to say around 30, 35 miles
8	contact with your car?	8 an hour.
9	A. First ramming I'm quite sure he rammed me	9 Q. Did you make any moves to pull the vehicle
10	twice -- two or three times. Made the car	10 off the road?
11	sort of lose control and then I regained.	11 A. No.
12	Q. That's what I want to do. I want to take	12 Q. You said your neck got jerked around. Did
13	them one by one so you can tell me what	13 you come in contact with anything in the
14	happened each time he made contact with	14 car?
15	you. The first time that he hit you, was	15 A. Not -- At that time I didn't.
16	that, again, head-on his front to roughly	16 Q. How long did you drive at 35 miles an hour
17	the center of your bumper; is that right?	17 before something else happened?
18	A. Yes, sir.	18 A. Approximately 10 seconds and got rammed
19	Q. And how fast were you going at the time	19 again.
20	when he first hit you?	20 Q. So this would be ram number two; correct?
21	A. I may have been going approximately 45 to	21 A. Yes, sir.
22	55 miles an hour at the first ramming.	22 Q. How did he hit you that time?
23	Q. What did you do when you felt the impact?	23 A. Same way, bumper.
	Page 66	Page 68
1	A. Well, on impact it jerked my neck and for a	1 Q. Center on?
2	brief moment I lost control of the car like	2 A. Yes, sir.
3	swerved from the ramming. And I looked in	3 Q. Do you have any estimate of how fast they
4	the mirror at this time to see what was	4 were going? Let's go back to the first
5	going on, but I still couldn't see what	5 time he hit you. Do you have any idea how
6	they was doing back there. I drove	6 fast he was going when he hit you?
7	approximately another quarter mile.	7 A. I would estimate not too much faster than
8	Q. Hang on just a second. You said you looked	8 me, because they were riding my bumper the
9	back in the rear view mirror. About how	9 whole time.
10	long did you look?	10 Q. So he couldn't have accelerated too much
11	A. Just a glance up after they rammed.	11 before he came in contact; right?
12	Q. Could you see what they were doing?	12 A. I guess not.
13	A. No. I couldn't make visual what they were	13 Q. What about the second time, do you have any
14	doing.	14 idea how fast he was going?
15	Q. Did you see a blue light?	15 A. I can't approximate how fast he was going.
16	A. No, sir.	16 I just know the impact was variably the
17	Q. Did you see any badges?	17 same.
18	A. No, sir.	18 Q. Did he stay on your bumper between the
19	COURT REPORTER: Can I stop for	19 first and the second impact?
20	two seconds?	20 A. After the first impact I don't think he was
21	MR. WILFORD: Sure.	21 riding my bumper as close. Because like I
22	(Brief pause.)	22 say, I sort of lost control. He probably
23	Q. All right. After you got control of the	23 fell back a little until I regained control

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1	and then I felt the ram again.	1	I was on the opposite side of the road in a daze. By the time I opened the car door
2	Q. About how far did he fall back?	2	they was already out of their vehicle with
3	A. I can't say how far because I really didn't	3	guns drawn.
4	look back. I just know I was swerving and	4	Q. Let's talk about your head hitting the
5	I'm quite sure he wasn't on my bumper while	5	steering wheel. What part of your head hit
6	I'm swerving.	6	the steering while?
7	Q. Right. When you did that glance into the	7	A. My right -- left temple.
8	rear view mirror, though, about where was	8	Q. Right above your eye there?
9	he? Was he still back on your bumper? Had	9	A. Yeah. I've still got a knot up there from
10	he fallen back?	10	it.
11	A. No. He had fell back approximately 20, 30	11	Q. And you weren't wearing your seat belt at
12	yards after he first bumped me.	12	the time; right?
13	Q. All right. So the second impact was about	13	A. No, sir.
14	as hard as the first impact; right?	14	Q. Was that from the second hit or the spinout
15	A. Yes, sir.	15	hit that sent your head into the steering
16	Q. What happened immediately after the second	16	wheel?
17	impact?	17	A. Had to be the spinout, because when he hit
18	A. Immediately after the second impact, the	18	me, it like threw me off the seat out of
19	car veered a little more, and immediately	19	control and I just snatched the wheel and
20	following that that's when he bumped it	20	the car just went where it went.
21	again on my driver's side bumper and	21	Q. So it went all the way across the oncoming
22	spinned me out of control. That's when my	22	lane; is that right?
23	head hit the steering wheel. I snatched	23	
1	the vehicle. It jumped Highway 21 and	1	A. Yeah. It went -- When he spinned me out,
2	landed on the opposite side of the highway	2	the car went off the bluff toward the bluff
3	in a ditch on a spinout.	3	to the right of the road on two wheels. I
4	Q. Okay. So you're saying that the hit where	4	snatched it and all I can remember is it
5	he spun you out came fairly quickly after	5	clearing the highway or whatever. I ended
6	the second ram; is that right?	6	on the opposite side of the road facing the
7	A. Yes, sir.	7	way we just came.
8	Q. Were you still going about 35 miles an hour	8	Q. So you went off to the left from your
9	when the spinout hit occurred?	9	direction of travel; is that right?
10	A. Yes, sir. Approximately.	10	A. That's where --
11	Q. Were you able to take any kind of	11	Q. Your car went to the left?
12	corrective action with the car between the	12	A. That's where it landed.
13	time of the second hit and the spinout hit?	13	Q. Your initial direction of travel?
14	A. After he rammed me the second time, like I	14	A. Yes, sir.
15	say, I guess because I wasn't going as	15	Q. And the stereo was still going the whole
16	fast, the car just like jerked. And before	16	time; right?
17	I can regroup, he had hit me again on the	17	A. Whole time.
18	bumper. And that's when I spinned out	18	Q. Between the first time that you were hit
19	toward the bluff. My head hit the steering	19	and what we're calling the spinout hit
20	wheel. Knowing it's a deep bluff right	20	here, did Kevin say anything to you that
21	here, I snatched the steering wheel, and	21	you heard?
22	all I know the car jumped or skid across	22	A. No, sir.
23	Highway 21. Because when my head came up,	23	Q. Do you recall saying anything?

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1	A. I was probably mumbling to myself, they're	1 21?
2	trying to kill me, what they doing,	2 A. Probably had to be on Highway 21.
3	something to that effect.	3 Q. What is this area here in this intersection
4	Q. Did you ever think to pick up that gun and	4 of 7 and 21 like? Is it built up? Are
5	defend yourself with it?	5 there a lot of buildings? Is it wooded?
6	A. No, sir.	6 Give me an idea of what the area around
7	Q. Did you have a cell phone with you that day?	7 there looks like.
8	A. I'm quite sure I did.	8 A. This area where --
9	Q. Do you remember what the phone number was?	9 Q. I tell you what. Let's start on County
10	A. I don't remember.	10 Road 7 from basically where you turned off
11	Q. Did you try to call anybody?	11 on 16 up to 21. Are there any houses or
12	A. No, sir. I didn't have time.	12 churches or anything like that there?
13	Q. That's a good point. From the time that	13 A. Well, after coming through what's called
14	you saw that Lincoln break back on County	14 the swamp on County Road 16, swampy area,
15	Road 7 until the time that you came to a	15 no houses. I don't know what's in the
16	stop on Highway 21, how much time had	16 woods. No houses. Two bridges. On County
17	passed?	17 Road 7 there's a church right to your
18	A. If I had to estimate, I'd approximately say	18 left. As soon as you turn onto it there's
19	anywhere from five to 10 minutes.	19 a church.
20	Q. Did Kevin have a cell phone?	20 Q. At the intersection of 16 and 7?
21	A. No, sir.	21 A. Yeah. That's the intersection. It's a
22	Q. All right. So in that entire five- to	22 church there. And immediately turning on
23	10-minute period, you never picked up the	23 County Road 7 I know there's a house and
	Page 74	Page 76
1	phone to make a call?	1 another house or two on your left. And
2	A. No, sir.	2 after that --
3	Q. Never thought to call for help?	3 Q. Is this as you're traveling towards 21 that
4	A. It's a panic situation. You think you're	4 you're describing for me?
5	getting robbed. You ain't got time to call	5 A. Immediately turning onto County Road 7
6	for no help when I'm driving.	6 approximately a quarter mile you'll run up
7	Q. The entire time that passed between the	7 on a house and a trailer and approximately
8	first time that you were hit until you were	8 two houses on your left. Then it's just
9	spun out, were there any vehicles on the	9 another wooded stretch and a bridge.
10	road besides yours and the Lincoln?	10 Q. What about on 21 where you turned right
11	A. I didn't meet any traffic on County Road 7,	11 there, what's the area like around there?
12	and I don't recall meeting any traffic on	12 A. It's a caution light. It's a big -- two
13	County Road 21 until after the incident was	13 big ponds and used to be a junkyard. Guy
14	over.	14 owned a big house on the hill up from the
15	Q. Did you throw anything out the window at	15 ponds and probably two older model houses
16	any time?	16 on your left. Then you've got a another
17	A. The only thing I had in my hand was a	17 stretch -- bridge and stretch or whatever.
18	cigarette butt. I was smoking previous to	18 Q. Any churches or anything like that around
19	the whole incident. If anything was	19 there?
20	thrown, it had to be a cigarette butt	20 A. Not right there on Highway 21. Not right
21	because I didn't have anything else.	21 there.
22	Q. Where did you throw that cigarette butt	22 Q. Any gas stations or stores?
23	out? Was it on County Road 7 or Highway	23 A. Yeah. There's a store probably a quarter

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1 mile to your left from the caution light.
 2 Q. Going back towards Braggs?
 3 A. Yeah. Going back towards Braggs.
 4 Community store right there.
 5 Q. What about in the direction that you
 6 traveled on 21, are there any stores or gas
 7 stations or anything like that?
 8 A. The direction I traveled that day going
 9 home?
 10 Q. Yes, sir.
 11 A. No gas station. No store.
 12 Q. And your house is on Highway 21?
 13 A. Right off the dirt road. Turn right off of
 14 21.
 15 Q. About how far back off of 21?
 16 A. Just a couple hundred yards.
 17 Q. Are there any other houses around that one?
 18 A. Yeah. It's a couple houses right at the
 19 caution light about a quarter -- about 2,
 20 300 yards from where I live, caution light,
 21 and there's a couple more residences in the
 22 area.
 23 Q. Is that a different caution light than the

1 Exhibit 2. Is that where your car came to
 2 rest? Does that depict where your car came
 3 to rest after being spun out?
 4 A. Yes, sir.
 5 (Defendant's Exhibits 7 and 8 was
 6 marked for identification.)
 7 Q. I'm going to show you a couple more
 8 pictures here. I want to show you what
 9 we're going to mark as Defendant's 7 and 8
 10 and let you and your lawyers take a look at
 11 those pictures. Now, do those pictures
 12 also show the way your car wound up on
 13 Highway 21 on June 28th, 2005?
 14 A. Yes, sir.
 15 Q. And we can also see another car in
 16 Defendant's 7 and 8. Is that the Lincoln
 17 that you've been describing?
 18 A. Yes, sir.
 19 Q. Is that how the Lincoln wound up after you
 20 were spun out?
 21 A. They pulled down in the direction. They
 22 pulled off the road in front of me.
 23 Q. And then they turned around and came back;

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1 one you've been telling me about on 7/21?
 2 A. Yeah.
 3 Q. So that's further on down?
 4 A. Yeah. Right down from my home there's
 5 another caution light right down there.
 6 Q. You're pointing right about where 21
 7 intersects the Lowndes/Wilcox County line.
 8 A. Yeah.
 9 Q. I'm just trying to describe for the record
 10 where you were pointing.
 11 A. Wilcox County line actually was about a
 12 mile from the --
 13 Q. From your home or from where you wound up?
 14 A. From my home.
 15 Q. How far were you from your home when you
 16 were spun out?
 17 A. Approximately a mile.
 18 Q. Did your car hit anything when it was spun
 19 out other than the Lincoln?
 20 A. Probably embankment is all I can say.
 21 Q. Didn't hit a mailbox or --
 22 A. No. It's no mailbox in the area.
 23 Q. And we showed you already Defendant's

1 is that right?
 2 A. No. They pulled down after -- This is
 3 where I landed.
 4 Q. Right.
 5 A. And by the time my head is up off the
 6 steering wheel, my door -- they had already
 7 pulled down and standing in the doorway
 8 with guns drawn.
 9 Q. That's -- Actually you make a good point
 10 there. Let me -- Did you see what happened
 11 to the Lincoln after it made contact --
 12 made the contact with your vehicle that
 13 spun you out?
 14 A. No. Once I went spinning, I didn't see
 15 anything else until the car came to rest.
 16 And like I say, my head hit the steering
 17 wheel. I had like a daze. And when I
 18 leaned back and opened my eyes, the Lincoln
 19 was pulling down right there and they
 20 jumped out of the car with pistols drawn.
 21 I didn't have an opportunity to get out. I
 22 just opened the door and they was already
 23 up.

Deposition of Richard Marshall

November 14, 2007

	Page 81	Page 83
1	Q. So you saw the Lincoln -- I want to make 2 sure I got you right. You saw the Lincoln 3 come to that position that we see it in in 4 Defendant's 7 and 8; is that right?	1 with guns drawn? 2 A. Yes, sir. 3 Q. You saw the guns, then, at that time? 4 A. Yes, sir.
5	A. Yeah. I saw it pull down.	5 Q. Now, when they got out -- and I want to 6 make sure I understood what you told me -- 7 were you still inside the car or had you 8 gotten out?
9	Q. And is that where that car was when, as you 10 described, they got out with their guns 11 drawn?	9 A. No. I hadn't gotten out. When they was 10 rolling up and jumped out of the car with 11 guns, I hadn't had an opportunity to get 12 out. I had opened the door, but like I 13 say, I was in a daze. And I got out of the 14 car after that and that's when they started 15 yelling commands. At that time is where I 16 seen a shield or whatever they had hanging 17 around their neck.
13	A. Yes, sir.	18 Q. Both of them?
14	Q. Defendant's Exhibit 7, that's the rear of 15 your car; correct?	19 A. Well, I know I saw the passenger because he 20 was more out, which was Chris West. He was 21 on the passenger's side at this time. I 22 really couldn't see what Mr. Hutson had on.
16	A. Yes, sir.	23 Q. Chris West was on the passenger side when
17	Q. What is that license plate?	
18	A. BRich3.	
19	Q. That's a personalized plate; is that right?	
20	A. Yes, sir.	
21	Q. Did you select that?	
22	A. Yes, sir.	
23	Q. What does that mean?	
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1	A. Just a nickname. I had the same license on 2 two other vehicles. That's just the third 3 vehicle I had purchased. I had another 4 Nova.	1 you saw him? 2 A. Yeah. 3 Q. And where was Hutson? 4 A. On the other side of the door.
5	Q. So your nickname is B Rich; is that right?	5 Q. On the driver's door? 6 A. Uh-huh (positive response). 7 Q. Did you see how they got to that position? 8 Because I think you told me earlier that 9 Chris was driving.
6	A. Uh-huh (positive response).	10 A. No. I didn't say he was driving. I said 11 that they got out with their guns drawn. I 12 never said Chris was driving because Shawn 13 Hutson was on the passenger side. But all 14 I knew is when I leaned up Chris West was 15 on this side of the car because he's the 16 one that took me down. Shawn Hutson was on 17 the other door.
7	Q. Where does that come from?	18 Q. Okay. I'm a bit confused here, so we've 19 got to get this right. When the car pulled 20 up alongside of you twice, it was Shawn 21 Hutson who was gesturing at you to pull 22 over; right?
8	A. Just a nickname. Gained a little weight 9 over the years. People started calling me 10 Big Rich. I used to be a skinny guy.	23 A. Yeah.
10	Q. I got you. So the Rich is short for 11 Richard?	
11	A. Yeah.	
12	Q. I got you. So you at some point had 13 vehicles that had BRich1 and BRich2 on 14 them?	
13	A. Yeah.	
14	Q. When you hit your head on the steering 15 wheel, did it get cut?	
15	A. No, sir. Just a knot.	
16	Q. All right. You saw the Lincoln pull up to 17 where we see it on 7 and 8 and they got out 18 with guns drawn. Did both officers get out	

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1 Q. And he was on the passenger's side; right?
 2 Is that right?
 3 A. I understood it to be him. I know it was a
 4 skinnier guy.
 5 Q. I understand you didn't know him at the
 6 time.
 7 A. Uh-huh (positive response).
 8 Q. And Chris and Shawn were the only two in
 9 the Lincoln; right?
 10 A. Yes, sir. The only two.
 11 Q. So doesn't that basically mean that Chris
 12 had to have been driving?
 13 A. Yeah. I guess he was driving, yeah.
 14 Q. So let me go back to my question. Did you
 15 see how it was that Chris wound up on the
 16 passenger's side of the car after you were
 17 spun out and Shawn wound up on the driver's
 18 side?
 19 A. I didn't see that, but it was Chris West
 20 that was on the passenger's side with the
 21 gun on me.
 22 Q. And you said you saw the shield on Shawn;
 23 is that right?

1 A. (Witness nods head).
 2 Q. When they told you to get on the ground,
 3 did you get on the ground?
 4 A. No, sir.
 5 Q. Why did you not get on the ground?
 6 A. Because I was agitated. I didn't know what
 7 was going on, why this was happening. But
 8 I still had my hands on top of the door
 9 letting them know I wasn't posing a threat,
 10 but I just didn't feel like getting on the
 11 ground at the time.
 12 Q. Did you say anything to them?
 13 A. I'm quite sure I did.
 14 Q. What did you say?
 15 A. Why y'all doing this, what's going on,
 16 something to that effect, what's this all
 17 about.
 18 Q. At this point you'd seen the badge on
 19 Chris; right?
 20 A. Yeah, I saw it.
 21 Q. So you knew they were police at this time;
 22 right?
 23 A. I did.

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1 A. Saw the shield on Chris. I really couldn't
 2 see --
 3 Q. Keep me straight. Shield on Chris. Did
 4 you get out of the car on their command or
 5 on your own?
 6 A. Well, after -- Like I say, they was already
 7 out. They may have commanded me, but I was
 8 dizzy in the head. I got out of the car
 9 and stood in the door with my hands up.
 10 And I was asking them what's going on, and
 11 they were just telling me, get on the
 12 ground, get on the ground, get on the
 13 ground.
 14 Q. So you could hear them now; right?
 15 A. Yeah. I could hear them.
 16 Q. Music still going?
 17 A. Still going.
 18 Q. But now you can hear them?
 19 A. Yeah. I'm out of the car.
 20 Q. At this time is the gun that was in your
 21 car where it is in Defendant's 3?
 22 A. Yes, sir. It was laying there.
 23 Q. Just like that?

1 Q. What did they say, if anything, when you
 2 said what you said to them?
 3 A. Shawn Hutson, he wasn't focusing on me. He
 4 didn't say anything. Chris West was just
 5 saying get on the ground. He said a couple
 6 of dirty words, too; get on the ground, get
 7 on the ground, get on the ground. And he
 8 just eased up on me and slammed me to the
 9 ground.
 10 Q. You said Shawn wasn't focused on you. What
 11 was he doing?
 12 A. He was more or less watching my cousin.
 13 Q. After y'all came to a stop, what did Kevin
 14 do?
 15 A. I really couldn't tell you what he was
 16 doing. I was focusing on them. After the
 17 car came to a stop and they drawed out, my
 18 attention was on them. So I really don't
 19 know what he was doing.
 20 Q. Well, when was the next time that you
 21 became aware of what Kevin was doing?
 22 A. When Shawn Hutson came around and got him
 23 out of the car and put him in cuffs.

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1	Q. Was that before or after Chris West had	1	car. Were they on top of the --
2	approached you?	2	A. Top of the door. I was standing in the
3	A. He had already came along and subdued me.	3	door with my hands like this (indicating)
4	Q. Other than commanding you to get on the	4	so he can clearly see.
5	ground initially, did Chris or Shawn say	5	Q. We're going to look at Defendant's 2
6	anything else?	6	again. You can see here you've got both
7	A. At that time I can't recollect. Up until	7	the driver's side front and rear door
8	the point where he -- Chris West put me on	8	open. I'm sure the driver's side rear door
9	the ground I can't recall anything they	9	wasn't open while all this was going on;
10	said besides get down.	10	right? That was later?
11	Q. Did they identify themselves, DTF or	11	A. Yes, sir.
12	sheriff's department or anything like that?	12	Q. Was the front door open about like it is --
13	A. They didn't identify nothing.	13	A. Yes.
14	Q. Other than the badges that they had on --	14	Q. -- while this initial confrontation between
15	well, the badge that Chris had on?	15	you and the officers was going on?
16	A. The badge.	16	A. Yes, sir. I was standing in my doorway
17	Q. All right. You said Chris came and	17	with my hands up right here on top while
18	approached you and you were still standing	18	they was drawn and commanding me.
19	up at that time; right?	19	Q. Did anybody give any commands to Kevin that
20	A. Yes, sir.	20	you heard?
21	Q. What happened when he got to you?	21	A. Like I say, I really can't recall any
22	A. He got to me, kick slammed me to the	22	commands being given to Kevin, because the
23	ground.	23	music is still loud and I'm just focusing
1	Q. Describe that for me. You say kick slammed	1	on this gun is drawn on me and I can
2	you to the ground. How did that happen?	2	clearly see what he's doing.
3	A. I had my hands up right above my door. He	3	Q. Now, at the point from where Chris drew
4	eased up on me with the gun drawn and he	4	down on you until he came up on you, you
5	got close enough until he grabbed me and	5	got a pretty good look at him; right?
6	swept my feet with his feet and slammed me	6	A. Uh-huh (positive response).
7	face down on the ground. He put his foot	7	Q. What else did he have on him, if anything,
8	on my back and handcuffed me. Then he had	8	as far as on his person? Did you see any
9	his foot on my neck.	9	equipment belt or anything like that?
10	Q. He cuffed you behind your back?	10	A. Only thing I can recognize is he had on a
11	A. Yes, sir.	11	black T-shirt with the shield and he had on
12	Q. As he was approaching you, did he say	12	regular short pants like I had on, tennis
13	anything to you?	13	shoes or something to that effect.
14	A. I don't remember him saying anything but	14	Q. Did you see anything on his belt?
15	just get down and he walked up on me.	15	A. I can't recall. I wasn't paying any
16	Q. Did you say anything back to him as he was	16	attention to that. All I was focusing on
17	coming up on you?	17	was the gun on me.
18	A. I didn't say anything then.	18	Q. From the time Chris initially yelled at you
19	Q. Did you ever at any time make any move back	19	to get on the ground until the time that he
20	inside that car?	20	approached you and as you said foot-swept
21	A. No, I didn't. I was standing in the car in	21	you and cuffed you, did he do anything else
22	a daze and --	22	that we haven't talked about?
23	Q. You said your hands were up on top of the	23	A. Not from the time he came from there and

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1 foot-swept me on the ground he didn't.
 2 Q. After you were in cuffs and on the ground,
 3 I think you told me earlier that's when
 4 they cuffed Kevin; right?
 5 A. Yes. Shawn Hutson went and pulled him out.
 6 Q. Were you able to see that --
 7 A. Yes.
 8 Q. -- from where you were?
 9 A. Yeah.
 10 Q. How were you -- Let's go back to
 11 Defendant's Exhibit 2 again. Once you were
 12 cuffed and on the ground, can you show me
 13 how you were laying by referencing
 14 Defendant's 2?
 15 A. Well, when he foot-swept me and kicked me
 16 on the ground, I was laying out toward --
 17 like in this direction headed toward this
 18 direction.
 19 Q. So you're out --
 20 A. Out from the door.
 21 Q. -- to the lower part of the picture
 22 underneath the door -- the front door?
 23 A. Out from the door, yeah.

1 Q. How did he take him out? Describe that
 2 process for me.
 3 A. Only thing I can see he grabbed him and
 4 pulled him out of the car.
 5 Q. Was it through an open door or through the
 6 window?
 7 A. The door. The door was open.
 8 Q. And what did he do to him once he pulled
 9 him out of the car?
 10 A. Put him in handcuffs and set him up there
 11 on that hill.
 12 Q. Where we see him in Defendant's 7 and 8?
 13 A. Yeah.
 14 Q. Did he pretty much stay there for the rest
 15 of the time until he was taken from the
 16 scene?
 17 A. Yes, sir.
 18 Q. All right. Once Kevin was cuffed, what
 19 happened?
 20 A. Chris West got me up off the ground and put
 21 me back upside my car door. My back door
 22 wasn't open at the time. My back is
 23 against my door and in cuffs, and he

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1 Q. Is that with your head facing back towards
 2 Highway 21?
 3 A. My head is out this way where I can see
 4 Highway 21 and I can see in my car.
 5 Q. Looking at Defendant's 2, where is the
 6 Lincoln at? Can you point for me the
 7 general direction the Lincoln was in?
 8 A. The Lincoln was still up here at the front
 9 where it was.
 10 Q. You're kind of pointing off to the
 11 left-hand side of Defendant's 2 kind of in
 12 the middle; is that right?
 13 A. Up in front of the vehicle where it was
 14 resting on the other picture. The Lincoln
 15 was still there.
 16 Q. How did Kevin get out of the car?
 17 A. Shawn Hutson pulled him out of it.
 18 Q. I understand that. But what side of the
 19 car did he come out of?
 20 A. Passenger's side.
 21 Q. So Shawn came around to the passenger's
 22 side of the car and took him out?
 23 A. Yes, sir.

1 started asking me, you ain't seen the
 2 badge, you ain't see this, you ain't see
 3 that. I said, man, I ain't seen nothing
 4 but the gun. He didn't like what I was
 5 saying, so he grabbed my pants and he
 6 shoved me against the car. I said, man,
 7 what you doing. He started going in my
 8 pockets. I know he took my wallet out. I
 9 didn't even see him take the money out. He
 10 took my wallet out, open it up, throw it
 11 inside my car on the seat.
 12 Q. Which seat? The back seat or the front
 13 seat?
 14 A. It was on the front seat.
 15 Q. Did we see your wallet in any of these
 16 pictures?
 17 A. I didn't see it.
 18 Q. So he searched your pants?
 19 A. Yeah. He put his hands in all my pockets
 20 and he came out with the wallet and looked
 21 in it. And like I say, I didn't see him
 22 come out with the money. But I was still
 23 standing there. He was raving on about why

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1 I ain't stopped, this and that. I told him
 2 I didn't know who he was; I thought you was
 3 somebody trying to rob me. You know who I
 4 was, this and that back and forth.
 5 Q. Let me stop you right there. Other than
 6 your wallet -- You said you didn't see him
 7 take the money out?
 8 A. I didn't see him take it out, but he put
 9 his hand in the pocket where my money was.
 10 I didn't see him take it out.
 11 Q. Did he take anything else out of your
 12 pockets?
 13 A. Just my wallet in my sight. I saw him take
 14 the wallet out and go through it and throw
 15 it down.
 16 Q. Did he search any other part of your person
 17 other than the pockets of your pants?
 18 A. He had -- Like I say, he had his hands
 19 verbally in -- like in the belt part of my
 20 pants and pulled them first like shoved me
 21 against the car. Then he started searching
 22 me. After that he went to the trunk of the
 23 car and started tearing it up, opening it

1 whatever. Shawn was more or less over by
 2 the vehicle.
 3 Q. I'm just focusing on the time right now
 4 while Chris was searching your person, not
 5 the vehicle yet. Was Shawn standing
 6 nearby?
 7 A. I can't recollect where he was then. I
 8 know he had got Kevin out of the car and he
 9 wasn't in our immediate space.
 10 Q. All right. Once he got done -- Once Chris
 11 got done searching you, what did he do with
 12 you, if anything?
 13 A. I was standing right there, as I say, in my
 14 car door. The passenger rear door is still
 15 closed. He wanted me to get in the back
 16 seat of the car. I said, man, you see this
 17 tight space; I can't get in there with my
 18 handcuffs on; I'm a big guy; I can't get in
 19 there. He got mad and grabbed me inside my
 20 pants and rammed me against the car and he
 21 snatched me back. That's when my pants hit
 22 the ground off my leg because he busted the
 23 zipper and the button. My pants was on the

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1 up.
 2 Q. Okay. About how long did his search of
 3 your person take?
 4 A. I would approximately say 10 minutes.
 5 Q. 10 minutes?
 6 A. Approximately. Because he went through the
 7 trunk and everything.
 8 Q. I'm just talking about your person.
 9 A. Oh, me?
 10 Q. Yeah. Your person.
 11 A. Couple of minutes. Couple of minutes.
 12 Q. While this was going on, were you able to
 13 see or hear what was going on with Kevin?
 14 A. No. I ain't heard -- As far as I know,
 15 Shawn had placed him over there sitting
 16 down. He wasn't going nowhere.
 17 Q. Was Shawn present while you were being
 18 searched by Chris West?
 19 A. Yes, sir.
 20 Q. Was he standing there?
 21 A. He was more or less out around the Lincoln
 22 Town Car around the vehicle. Chris was
 23 searching me, searching the trunk or

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1 ground. I said, man, what you doing. I
 2 said, you see I can't get in there; put me
 3 in the patrol car or whatever you're going
 4 to do. You're going to get in here; such
 5 and such, such and such. So at this time
 6 cars started coming up Highway 21. He
 7 stopped doing what he's doing, went to the
 8 Lincoln Town Car, reached in there, got a
 9 light. He put the light on top of the
 10 car. The light wouldn't even work. He
 11 beat on the light three or four times
 12 before the light started flashing. That's
 13 how I was able to know there was no light
 14 present throughout the whole incident. He
 15 put the light on the car after he had did
 16 all this and I'm watching him doing this.
 17 Q. You watched him take the light out of the
 18 car and put it up on --
 19 A. I watched him reach inside the car and come
 20 out with a light. He stuck it on top of
 21 the car and he beat on it three times
 22 before it even started flashing.
 23 Q. How much did you weigh in June of '05?

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1 A. I was probably weighing about 275, 280 back 2 then. 3 Q. How tall were you? 4 A. 5-9. 5 Q. The shorts you were wearing that day, were 6 they tight on you? Baggy? Were you 7 wearing them low slung? 8 A. Just snug fit, average fit. 9 Q. Did you have a belt on? 10 A. No belt. 11 Q. You were wearing boxers underneath them; is 12 that right? 13 A. Yes, sir. 14 Q. You said the zipper broke on the shorts? 15 A. The zipper bust and the button popped off, 16 because he stuck his hands in the inside of 17 my crotch and gripped the pants and forced 18 me back in the car while I'm already in 19 cuffs. Then he choked me because I was 20 asking what he was doing. I said, man, 21 what this all about. When I wouldn't get 22 in the car -- That's what made me get in 23 the back seat of the car. He verbally		1 that right? 2 A. Full nelson, some type of chokehold. 3 That's all I know. I can't describe 4 exactly how it was. All I know I was being 5 choked. He was in front of me and he was 6 choking me. Cut my air off. 7 Q. Once you got in the car, did he stop 8 choking you? 9 A. He stopped choking me while I was still 10 standing there because I gave up 11 resisting. I told him, okay, I'll get in 12 the car because I couldn't breathe. 13 Q. So you agreed to get in the car and he 14 released his hold; is that right? 15 A. Yes. 16 Q. About how long were you in that hold? 17 A. Long enough for my breath to get cut off. 18 Q. Seconds? Minutes? 19 A. Seconds. Wasn't no minutes. Seconds. 20 Q. 10 seconds? Five seconds? 21 A. I don't know how many seconds. 22 Approximately five to 10 seconds. 23 Q. We do see you in the car in these pictures;
1 chocked me until I couldn't breathe, and 2 that's when I subdued and got in the back 3 seat of the car. 4 Q. Describe for me how he choked you. 5 A. Doing the motion. When he slammed me 6 against the car, I still wouldn't get in 7 the back seat of the car because I 8 couldn't -- it's a small car. I know I 9 couldn't hardly get in there. And I 10 wouldn't obey what he was doing. He said, 11 you're going to get in the back seat of 12 this car because traffic coming at the 13 time. He grabbed one hand on the back of 14 my neck some kind of full nelson choke and 15 my head was like this (indicating). You're 16 going to get in the car. That's what he 17 said. You're going to get in there. And 18 when I stopped -- couldn't breathe, I gave 19 up and crawled in the back seat of the 20 car. You see my legs are still out. I 21 couldn't get my whole body in there. 22 Q. So he had one arm in the front of your neck 23 and one arm in the back of your neck; is	Page 102	Page 104
		1 right? Let's look at Defendant's 7. Is 2 that you in the back seat of the car there? 3 A. Yes, sir. 4 Q. And Defendant's 8, is that you in the back 5 seat of the car? 6 A. Yes, sir. 7 Q. And I think you told me he searched your 8 car too. Was that before or after he put 9 you in the back seat of your car? 10 A. I know he searched it -- the inside part 11 with me standing right here just reaching 12 in. I'm standing here. He just reached in 13 and he got the keys out during that time 14 and he went to the trunk of the car, opened 15 it with the keys and started going through 16 the trunk while I was standing there. And 17 he came back and slammed the trunk or 18 whatever and came back around. 19 Q. At some point did he find the gun? 20 A. Oh, he already saw the gun. 21 Q. Tell me when you first became aware that he 22 was aware of the gun. 23 A. After he had slammed me down on the ground

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1 and put me in cuffs they saw the gun,
 2 because they was making little smart
 3 comments about the gun on the seat and this
 4 and that.

5 Q. Who made the comment about the gun?
 6 A. Shawn Hutson. Oh, he got a big gun; oh, it
 7 ain't no cheap gun either; all this and
 8 that. I told them it's not my gun. That's
 9 your gun? I said, it ain't my gun, man.

10 Q. Had the radio been turned off at this
 11 point?
 12 A. Chris West turned the radio down after he
 13 put me in cuffs.

14 Q. After he put you in cuffs?
 15 A. Yeah.

16 Q. Is that about the same time that he found
 17 the gun?
 18 A. Yeah. He saw the gun right after he
 19 reached in the car or whatever.

20 Q. Did he take the gun, did he move the gun,
 21 or did he just leave it right there where
 22 we see it?
 23 A. He left it right there.

1 or whatever. Then Shawn came over where he
 2 was and they were making little small talk
 3 about the caliber and the model of the gun
 4 or whatever, this and that.

5 Q. Any other conversation that you heard?
 6 A. No, sir. After that incident, Chris West
 7 took me up there and put me on the hill
 8 beside Kevin.

9 Q. Took you back out of your car?
 10 A. Yes, sir.
 11 (Defendant's Exhibit 9 was marked
 12 for identification.)

13 Q. I'm going to show you what we'll mark as
 14 Defendant's Exhibit 9.
 15 A. Uh-huh (positive response).

16 Q. Mr. Marshall, do you recognize what's in
 17 Defendant's Exhibit 9?
 18 A. Appear to be some money.
 19 Q. Looks like it's on some carpet too; right?
 20 A. Appear to be.
 21 Q. Is that the same kind of carpet that you
 22 have in your Nova?
 23 A. My Nova doesn't even have carpet in it, so

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1 Q. All right. Then he did a complete search
 2 of your car; is that right?
 3 A. He went to the trunk. He already had
 4 visually searched the little front part,
 5 which is not too much concealed. He went
 6 to the trunk and that's where he did most
 7 of the searching, moving stuff doing this
 8 and that, whatever he was doing back
 9 there. He came back a little while where I
 10 was.

11 Q. Did he bring anything with him when he came
 12 back up there where you were?
 13 A. No, sir.
 14 Q. Did he tell you that he had found anything?
 15 A. No, sir.
 16 Q. About how long did it take him to search
 17 the car?
 18 A. I'd say the whole search probably I'd say
 19 five to 10 minutes.
 20 Q. While Chris was searching the car, what was
 21 Shawn doing?
 22 A. Shawn was back toward the Lincoln Town Car
 23 and Chris made the statement about the gun

1 I don't know what that is.
 2 Q. Did you have money like that that day, a
 3 five and what looks like a bunch of ones?
 4 A. I had \$500. If that's the money, I don't
 5 know whose it is. It ain't mine. I had
 6 two \$100 bills and the rest in twenties.
 7 Q. So it's your testimony that that money
 8 wasn't in your car that day?
 9 A. I can't say it wasn't in my car. It may
 10 have been Kevin's money, but it's not mine.
 11 Q. So you don't recognize anything in
 12 Defendant's Exhibit 9 at all?
 13 A. It's not my money.
 14 Q. That's not what I asked you. I understand
 15 that you know that it's money. Do you
 16 recognize what Defendant's Exhibit 9 shows?
 17 A. I don't recognize that.
 18 (Defendant's Exhibits 10 and 11
 19 were marked for identification.)
 20 Q. Mr. Marshall, I'm going to show you two
 21 more pictures, Defendant's 10 and 11. Were
 22 those pictures taken of you on June 28th,
 23 2005?

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- 1 A. Yes.
 2 Q. Is that what you were wearing at the time?
 3 A. Yes.
 4 Q. And that is you in those pictures; right?
 5 A. Yes.
 6 MR. WILFORD: Let's get something
 7 to eat.
 8 (Whereupon lunch recess was taken.)
 9 Q. (Continuing by Mr. Wilford) Mr. Marshall,
 10 you testified before we took a break that
 11 at some point you were taken and put over
 12 on the side of the hill there next to
 13 Kevin; right?
 14 A. Yes.
 15 Q. What, if anything, happened after you were
 16 put over there by Kevin?
 17 A. They ran my name, his name in and --
 18 Q. What do you mean they ran his name in?
 19 A. Warrant check or whatever, social security
 20 number. Ran both our names and --
 21 Q. Did any other police units arrive?
 22 A. Probably 30 to 45 minutes later they called
 23 back to Hayneville for a sheriff's deputy

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- 1 vehicle. It arrived, which I was placed
 2 in.
 3 Q. I'm sorry I interrupted you. So they
 4 called his information in?
 5 A. Called both of us in.
 6 Q. Anything happen after they called that in?
 7 A. No. We just was sitting there on the grass
 8 and they was walking around talking among
 9 themselves. I heard them calling in for
 10 the vehicle.
 11 Q. Did they call over a radio or cell phone,
 12 or how did they do that?
 13 A. Over the dispatch (indicating).
 14 Q. You're doing --
 15 A. Police dispatch.
 16 Q. Over the radio?
 17 A. I saw them reach in the car, yeah.
 18 Q. Could you hear what they were saying?
 19 A. Only what I could make out of it my social
 20 security number and name being called and
 21 they was running or whatever over the loud
 22 speaker.
 23 Q. And so you sat there on the side of the

- 1 hill for 30 to 45 minutes before another
 2 vehicle came?
 3 A. Yes. Before the police vehicle came.
 4 Q. Anything else happen during that time
 5 besides your information being called in?
 6 A. Not during that time I was sitting on the
 7 hill. Nothing happened then.
 8 Q. So nothing happened between that time and
 9 the time that another police unit showed
 10 up; is that right?
 11 A. No. Nothing happened. The only thing that
 12 I forgot to leave out that happened is
 13 backing up to when Chris West initially
 14 drawed down on me he did fire his weapon in
 15 my direction.
 16 Q. You forgot to mention that?
 17 A. Yeah.
 18 Q. Was that after you had a chance to talk to
 19 your lawyers at lunchtime?
 20 MR. LEWIS: Object.
 21 A. I just --
 22 MR. LEWIS: Don't discuss anything
 23 that you and I might have

	Page 113		Page 115
1 Q.	So you were still standing there?	1	ground. I've been arrested before. That's
2 A.	In the doorway, yeah.	2	why I had my hands up to show I wasn't
3 Q.	In the doorway of the car?	3	posing a threat. But I didn't see any
4 A.	Uh-huh (positive response).	4	reason why he had to fire at me.
5 Q.	And he fired?	5	Q. Well, when you were arrested before, did
6 A.	Yeah.	6	you do what the police told you to do?
7 Q.	This was after giving you commands and you	7	A. Yeah.
8 not complying; right?		8	Q. And you have no idea where the round hit
9 A.	Yeah. He had given some kind of command.	9	the ground other than it was generally
10 Q.	And you hadn't complied?	10	somewhere out in front of your car on the
11 A.	No.	11	passenger's side?
12 Q.	Where did he shoot?	12	A. I can't specifically say where it hit, but
13 A.	Right out -- if I may.	13	I know it was right in the direction of the
14 Q.	Sure.	14	front driver's door somewhere before the
15 A.	In this general direction (indicating).	15	end of the car. I heard it hit the ground
16 Q.	We're looking at Defendant's Exhibit 2.	16	when he shot.
17 A.	Right down past the doorway.	17	Q. Did it kick up any dirt or grass or
18 Q.	You're making a pretty broad motion there.	18	anything like that?
19 A.	I'm standing in the doorway, but he fired	19	A. Just like (indicating) quick.
20 right out from -- past the doorway in this		20	Q. Did any of it hit you?
21 direction down --		21	A. No. Didn't no dirt or -- it didn't hit me.
22 Q.	Towards the front of your car or --	22	Q. All right. Up until the point that another
23 A.	I heard the bullet hit the ground. I heard	23	police vehicle arrived, have you told me
	Page 114		Page 116
1	the gunshot. It hit the ground somewhere	1	everything that happened out there after
2 in this direction. He fired down there.		2	you were put on the side of the road?
3 Q.	Did the bullet strike the ground in front	3	A. Yeah. Up until he placed me beside Kevin.
4 of you or off to the side of you?		4	The only other thing happened is the
5 A.	I can't say exactly where it struck,	5	vehicle pulled up and they placed me in
6 gunfire. But I did hear it hit the ground		6	that vehicle and put Kevin in the Lincoln
7 in this area right here. I heard it.		7	Town Car.
8 Q.	How many times did he shoot?	8	Q. Let's talk about -- How many other vehicles
9 A.	One shot.	9	showed up?
10 Q.	And did you comply with his commands after	10	A. Just one.
11 he shot at the ground?		11	Q. What kind of car was it?
12 A.	I still had my hands up over the vehicle.	12	A. Brown Ford Crown Vic, county sheriff.
13 I asked him, why are you shooting at me,		13	Q. It was a county sheriff's vehicle?
14 what are you doing, and he was just still		14	A. Yeah.
15 saying, get on the ground, this or that,		15	Q. All right. Do you know -- How many
16 get on the ground. That's when he was		16	officers showed up in that car?
17 walking up on me.		17	A. One officer.
18 Q.	Okay. So this man just fired a round at	18	Q. Do you know the name of that officer?
19 your feet? This man that you know to be a		19	A. No, I don't.
20 police officer and you still didn't do what		20	Q. Can you describe him for me?
21 he said?		21	A. Appeared to be a younger white guy, kind of
22 A.	He fired at me, but I didn't -- like I	22	stocky build, Army cut.
23 said, I didn't run out to jump on the		23	Q. And you were placed in the back of his car?

	Page 117		Page 119
1	A. Yes, sir.	1	A. This would be 263 crossing.
2	Q. When did that occur? Was it right after he	2	Q. Right.
3	arrived, or how much time passed?	3	A. I would say somewhere in here right down
4	A. Well, I'll say approximately 10 minutes, 15	4	from the turn on County Road -- off County
5	minutes max after he arrived after they	5	Road 7 on 21.
6	figured out who was going to get in what.	6	Q. Looks like you're kind of pointing -- and
7	The guy placed me in the back of the county	7	correct me if I'm wrong -- about halfway
8	sheriff car and placed Kevin in the front	8	between County Road 7 and your home on
9	seat of the Lincoln Town Car. And Shawn	9	Highway 21.
10	Hutson drove off in my car.	10	A. Right off County Road 7 probably a couple
11	Q. You watched him drive off in your car?	11	hundred feet. That's where they stopped.
12	A. Uh-huh (positive response). He left first.	12	Q. Did they find anything?
13	Q. You were still there on the scene?	13	A. Not to my knowledge. I didn't see them
14	A. Uh-huh (positive response).	14	find anything.
15	Q. How long did you stay there on the scene	15	Q. Has it come to your attention at some point
16	after your car was driven off?	16	later that they found anything?
17	A. Approximately five minutes.	17	A. It was said that he picked a baggy up
18	Q. Did anything happen during that five	18	beside the road or something.
19	minutes?	19	Q. Did you ever see the baggy?
20	A. No. I just was driven off by the county	20	A. No, sir.
21	deputy sheriff.	21	Q. How long did it take them to search on the
22	Q. Did you leave first, or did Chris leave	22	side of Highway 21?
23	first?	23	A. I'll say approximately 15 minutes or so.
	Page 118		Page 120
1	A. Shawn Hutson left first.	1	Q. Was Kevin there, too, in their car?
2	Q. Yeah. We established that.	2	A. He was in the Lincoln.
3	A. Then I left in the deputy sheriff car. And	3	Q. What happened after they got done
4	we only went halfway up 21 when they	4	searching?
5	stopped and got out of the car and started	5	A. Chris West came back to the Lincoln, waved
6	looking for something. Shawn Hutson turned	6	Shawn Hutson to go on. And the sheriff car
7	around in my vehicle and came back and	7	pulled off with me and then they stopped at
8	stopped and got out with Chris West walking	8	the store right up the road I was telling
9	down 21 appeared to be looking for	9	you about, Howard's Country Store. Shawn
10	something. I was in the county sheriff	10	Hutson pulled up on the gas tank, put gas
11	car. Kevin was in the Lincoln Town Car	11	in my vehicle. Chris West, the deputy, and
12	behind us.	12	Shawn Hutson went inside the store.
13	Q. All right. Where did you stop? Was it	13	Probably got something to drink or
14	before County Road 7 or after County Road	14	whatever. I had a flat -- They had a flat
15	7?	15	on the sheriff's car. They changed the
16	A. On Highway 21 right up the road. After	16	flat while I was still in the car, Chris
17	turning on Highway 21, they stopped right	17	West and the deputy sheriff.
18	there and -- all three vehicles.	18	Q. There at the gas station?
19	Q. I understand it was on Highway 21. I'm	19	A. Yes, sir. They changed the flat. And
20	just trying to figure out. Let's go back	20	Shawn Hutson, he left about 10 minutes
21	and look at Defendant's Exhibit 5. About	21	earlier and went up 21 in my car.
22	where on County Road 21 did they stop and	22	Q. Was your car almost out of gas?
23	look?	23	A. Yeah. It was on E.

<p style="text-align: right;">Page 121</p> <p>1 Q. How long did that take there at the gas 2 station for them to do all that? 3 A. I'll say approximately another 20 minutes. 4 Q. Was there any conversation with you that 5 took place at that time? 6 A. No. I was in the back seat of the patrol 7 car the whole time. 8 Q. Nobody talked to you? 9 A. No, sir. 10 Q. Did anything else happen as far as 11 something happening to you personally while 12 you were there at the gas station? 13 A. No, sir. 14 Q. Just sat there and waited for them? 15 A. (Witness nods head). Yes, sir. 16 Q. What happened after the gas station? 17 A. After changing the tire, Chris West got in 18 the Lincoln. He left first. The deputy 19 sheriff got in and proceeded to go to the 20 Lowndes County Detention Facility. 21 Q. Between the gas station and the detention 22 facility, did you have any conversation 23 with the deputy?</p>	<p style="text-align: right;">Page 123</p> <p>1 toward the wall. The deputy was standing 2 over to the right by the counter. Told me 3 to take off -- Well, he took the cuffs 4 off. He told me to take off jewelry, 5 et cetera. 6 Q. Who told you to do that? 7 A. Chris West. Told me to take off the 8 jewelry. So I took the jewelry off, put it 9 on the counter. And at this point they was 10 fixing to log whatever possessions in the 11 booking. Chris West put what was supposed 12 to have been my money on the counter, which 13 I see was only five twenties, \$100 bill. I 14 immediately asked him where is the rest of 15 my money. The deputy reached to get the 16 money and tried to count it. Chris West 17 snatched it out of his hand and told him 18 don't worry about it, put him in the hole. 19 They put me in the hole. 20 Q. How much did he put on the counter? 21 A. \$100, five twenties. 22 Q. Five twenties? 23 A. Uh-huh (positive response).</p>
<p style="text-align: right;">Page 122</p> <p>1 A. No. He didn't say anything. 2 Q. Did you hear anything on the radio? 3 A. No, sir. 4 Q. What happened when you got to the jail -- 5 excuse me -- detention facility? 6 A. The deputy radioed to come in through the 7 gate and Chris West came in also. And he 8 brought -- Deputy got me out of the back 9 seat of the car and brought us into the 10 facility into booking. 11 Q. Anything out of the ordinary happen from 12 the time you got out of the car and you got 13 to the booking area? 14 A. No. 15 Q. Did you have any conversation with the 16 deputy? 17 A. No. 18 Q. Who escorted you from the car to the 19 booking area? 20 A. The deputy. 21 Q. What happened when you got to the booking 22 area? 23 A. I think Chris West told us to stand back</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. I take it at some point you had to have 2 been taken out of handcuffs, right -- 3 A. Yes, sir. 4 Q. -- to take all your stuff off? 5 A. Yes, sir. 6 Q. When were you taken out of handcuffs? 7 A. Not -- A couple of minutes after coming 8 into booking after Chris got behind the 9 desk and told them to take me out of the 10 cuffs so I can take my belongings off. 11 Q. Who took you out of the cuffs? 12 A. The deputy. 13 Q. Was there anybody present in the room 14 besides you, the deputy, and Chris? 15 A. Kevin. And another lady in booking was 16 behind the desk. 17 Q. There was a lady in booking? 18 A. Uh-huh (positive response). 19 Q. What about Shawn Hutson, was he present? 20 A. Shawn Hutson wasn't in there. 21 Q. Where was the lady that you described being 22 in booking when the discussion of the money 23 occurred?</p>

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- 1 A. Standing right there. She was in her
 2 desk. But when Chris came in, she got up
 3 and Chris got in the desk and started
 4 getting the paper or whatever. She was
 5 standing right beside him when he put the
 6 money on the counter and I immediately
 7 said, man, that's not all my money, where
 8 is the rest of my money. And the deputy
 9 reached for it to start counting it and
 10 Chris snatched it from him and told him,
 11 don't worry about it, put him in the hole.
- 12 Q. Do you remember what this lady's name was?
 13 A. I can't recall.
 14 Q. Can you describe her for me?
 15 A. I probably know her if I see her. It's
 16 been a while. I've seen her since I've
 17 been back up there. But I probably have to
 18 see her. I'm not sure if it's
 19 Ms. Cottrell. It's one of them. I don't
 20 know who is in booking. It was around
 21 two -- between two and 2:30 when we finally
 22 reached the facility that evening. From 12
 23 that evening when the incident started, it

- 1 Q. Did you ever talk to the sheriff about it?
 2 A. No, sir.
 3 Q. Did you ask for any medical attention?
 4 A. I did upon going to jail, but I never did
 5 get any.
 6 Q. When did you first ask for medical
 7 attention?
 8 A. Approximately the next morning I told them
 9 I had a headache and I had bumped my head;
 10 I had lacerations on my wrists from the
 11 cuffs being tight; I need to see a doctor;
 12 but no response.
 13 Q. How did you ask to get treatment?
 14 A. They have a -- press the button for verbal
 15 response and you have to fill out a paper,
 16 a request or something for it. But I never
 17 did get a chance to go.
 18 Q. Did you fill out the paper?
 19 A. Actually, I don't even recall. I can't
 20 really be certain. But I know I mashed the
 21 intercom to request a doctor.
 22 Q. Do you know who you would have spoken to?
 23 A. At the time it was just the jailer on duty

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- 1 was two to 2:30 when I finally reached the
 2 building.
 3 Q. You're saying evening. 12 noon?
 4 A. It was somewhere around 12 noon when the
 5 incident began. When I finally arrived
 6 there, it was somewhere between two --
 7 after two o'clock.
 8 Q. P.m. or a.m.?
 9 A. P.m.
 10 Q. Okay. I'm just making sure.
 11 All right. Now, you made a statement
 12 about your money there, a verbal statement;
 13 correct?
 14 A. Yes, sir.
 15 Q. At any time did you ever make a written
 16 statement about your money while you were
 17 in the jail?
 18 A. No, sir.
 19 Q. Did you ever file a grievance?
 20 A. No, sir.
 21 Q. Have you ever filed a report with any
 22 police agency about your money being taken?
 23 A. No, sir.

- 1 in the booth, whoever was in the booth at
 2 that time.
 3 Q. And you don't know who that is?
 4 A. I can't recall.
 5 Q. Was that the only time you asked?
 6 A. Yes. After I didn't get no reply, I just
 7 left it alone.
 8 Q. Was there anyone who witnessed you asking
 9 for medical attention besides the person
 10 you talked to in the booth?
 11 A. Inmates.
 12 Q. Do you recall any of their names?
 13 A. I don't really -- didn't know anybody in
 14 there. Just dayroom area people. I don't
 15 know any of them.
 16 Q. You didn't know any of them at the time?
 17 A. Not the present day when I requested
 18 medical treatment.
 19 Q. Have you spoken to anybody who was an
 20 inmate in there with you since then?
 21 A. No.
 22 Q. As you sit here today, you can't tell me
 23 any names of any of the inmates who were in

	Page 129	Page 131
1	there with you?	1 A. Not right off the top of my head I don't.
2	A. Maybe one or two that I got to know while I	2 Q. Was it her property that she was going to
3	was in there, but I haven't seen them since	3 put up for you?
4	I made bond.	4 A. Yes, sir.
5	Q. Who are they?	5 Q. Do you know where that property is?
6	A. I know Joshua Bullard. He was in there. I	6 A. It's in Mosses.
7	know it was somebody else in there I knew.	7 Q. Is it her residence?
8	I can't really recall right now off the top	8 A. Yeah. Brick home.
9	of my head.	9 Q. What happened with that?
10	Q. How long were you in the jail after being	10 A. From my understanding I talked with her
11	placed in there on the 28th of June?	11 three times on the phone. She told me that
12	A. I made bond August 5th.	12 she contacted Sheriff Vaughner and he told
13	Q. How did you make bond?	13 her that on first account that he would
14	A. Bail bondsman.	14 give it some thought. Second account he
15	Q. Who arranged that?	15 said -- he just blew it off. And the third
16	A. My girlfriend and me.	16 time he seen her that Wednesday and asked
17	Q. Who was your girlfriend?	17 him was he going to let her sign my bond.
18	A. Ernestine Powell.	18 He told her something to the effect I'm
19	Q. Ernestine?	19 going to let him sit there a while; I'll
20	A. Uh-huh (positive response).	20 have to think about it. And after that I
21	Q. Powell?	21 didn't even get in contact with her
22	A. Yes, sir.	22 anymore. She wouldn't try to do it, I
23	Q. Are you still in contact with Ms. Powell?	23 guess.
	Page 130	Page 132
1	A. Yes.	1 Q. That's what supposedly Sheriff Vaughner
2	Q. Where does she live?	2 told her?
3	A. Greenville.	3 A. Yeah. That's what she told me Sheriff
4	Q. Have you got an address?	4 Vaughner told her. She's the county
5	A. 22 Cherrywood Lane. She was on my bond.	5 commissioner over District 5.
6	Q. Did she put up the money?	6 Q. Do you know what the value of her property
7	A. Half of it.	7 is there in Mosses?
8	Q. Half?	8 A. Not exactly. I know it's a Jim Walter Home
9	A. (Witness nods head).	9 she had purchased some years ago.
10	Q. How much was your bond?	10 Q. Did she own it outright?
11	A. Initially 10,000. 10,000.	11 A. Yes, sir.
12	Q. There's an allegation in your amended	12 Q. Did you ever personally speak with Sheriff
13	complaint at paragraph 39 that an aunt	13 Vaughner about your bond?
14	tried to do a property bond for you. Who	14 A. I requested to talk to Sheriff Vaughner but
15	was that aunt?	15 never came through with the request. But
16	A. Marzett Wright.	16 one day he did happen to come in the back
17	Q. Can you spell that first name for me?	17 area where I did verbally ask him why
18	A. M-A-R-Z-E-T-T.	18 wouldn't he let my aunt sign my bond, and
19	Q. W-R-I-G-H-T?	19 he act as if he didn't know what I was
20	A. Yes, sir.	20 talking about. He told me, you give her a
21	Q. Where does she live?	21 call and he'll see what he can do. That's
22	A. Mosses Highway.	22 what he told me that day.
23	Q. Do you have an address for that?	23 Q. When was that?

<p style="text-align: right;">Page 133</p> <p>1 A. Approximately a week after I had been in 2 there, after she told me she had did all of 3 that. 4 Q. Okay. Did you have any visitation while 5 you were in jail? 6 A. Yes. 7 Q. Who came to visit you? 8 A. My aunt came once to retrieve my jewelry 9 and the \$100. 10 Q. Is that the same aunt that was going to put 11 up the house? 12 A. Shirley Marshall. It's my aunt. It's who 13 I released \$99 to because I took a dollar 14 for two aspirin I took in there. She took 15 my jewelry and \$99 off the book to go 16 toward my bond. 17 (Defendant's Exhibit 12 was marked 18 for identification.) 19 Q. Since we're talking about that, let me show 20 you Defendant's Exhibit 12. Have you ever 21 seen Defendant's Exhibit 12 before, 22 Mr. Marshall? 23 A. Yes. I had to sign that to release my</p>	<p>1 Q. Who did you call? 2 A. My aunt, Shirley Marshall. 3 Q. Shirley Marshall? 4 A. Yes, sir. 5 Q. And what did y'all talk about? 6 A. I told her that I had been arrested and I 7 needed her to come up here and see could 8 she get me out. 9 Q. And what did she say? 10 A. Asked me what happened and where is she 11 going to get the money from. I told her to 12 come get my money and come get my jewelry 13 and pawn it and try to get some bail when I 14 get -- when I get a bond. 15 Q. What kind of telephone did you use to make 16 that call? 17 A. Phone right there on the desk. 18 Q. Just a regular old phone? 19 A. I guess the office phone they use in 20 booking. The phone in booking. 21 Q. Do they have phones in the detention 22 facility back in the dayroom areas and the 23 cell blocks?</p>
<p style="text-align: right;">Page 134</p> <p>1 jewelry and the money. 2 Q. That's your signature there? 3 A. Yes, sir. 4 Q. And that's where Ms. Marshall came and 5 picked up your property and your \$99.50 it 6 says? 7 A. Yes, sir. 8 Q. Anybody else besides Ms. Marshall come and 9 visit you? 10 A. Girlfriend, Ernestine. 11 Q. Anyone else? 12 A. If anyone else came, I never saw them. 13 Q. And you were able to make some telephone 14 calls because you were telling me about 15 talking to your Aunt Wright. 16 A. Yes, sir. 17 Q. Did you make any other telephone calls -- I 18 tell you what. Let's back up and talk 19 about the 28th of June when you were 20 initially brought to the detention 21 facility. Were you able to make a phone 22 call that day? 23 A. Yeah.</p>	<p>1 A. Yes, sir. 2 Q. Did you ever make any phone calls on those 3 phones? 4 A. Yes, sir. 5 Q. How does that work? 6 A. Got to call collect and get somebody on the 7 other end to accept. 8 Q. And who did you call on that phone -- on 9 those phones? 10 A. In the back? 11 Q. Yes, sir. 12 A. Called Marzett Wright a couple of times. I 13 called my uncle. Uncle tried to post 14 bond. Didn't come through. 15 Q. Which uncle was that? 16 A. My father -- father's brother from New 17 York. Now stays in Selma. 18 Q. What's his name? 19 A. John -- I want to say John Cowans. Call 20 him Bip. 21 Q. Bip? 22 A. Yeah. That's all I know him from my childhood. Just moved from New York about</p>

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- 1 three years ago.
 2 Q. Anybody else?
 3 A. I called Shirley and her daughter on
 4 three-way. That's mostly who I was getting
 5 to call. And I had her to call my lawyer,
 6 Charlotte, and go to Charlotte's office for
 7 me.
 8 Q. Who is Shirley's daughter? You said her
 9 daughter.
 10 A. Cherry Marshall.
 11 Q. How old is she?
 12 A. Just estimating. I don't know. She go
 13 along with Kevin. However old Kevin is.
 14 I'm the oldest of all of them. However old
 15 he is. 20-something. They're the same
 16 age.
 17 Q. Did anything happen to you while you were
 18 there at the detention facility?
 19 A. Nothing physical, no.
 20 Q. And you said you were there until the 5th
 21 of August; is that right?
 22 A. Yes, sir.
 23 Q. And you were released on bond?

- 1 called my name on the docket. And Chris
 2 West called my lawyer in the corner and she
 3 told me that he was throwing it out and I
 4 can go home.
 5 Q. That Chris West was throwing it out?
 6 A. That's who she was in the corner and, you
 7 know, had a little mediation with and came
 8 back to me.
 9 Q. Did you ever learn why it was thrown out?
 10 A. No. I ain't ever known. No. She just
 11 told me they was throwing it out. He asked
 12 her permission to come speak to me and told
 13 me I can pick my vehicle up the next day,
 14 which they had it impounded since that
 15 incident. This was January 4th or 5th I
 16 want to say before the 6th when I went to
 17 court.
 18 Q. Was there any damage to your vehicle?
 19 A. Yeah. Knocked out of alignment. Pipes was
 20 hanging down.
 21 Q. What kind of pipes?
 22 A. Exhaust. Exhaust pipe was rattling. Rear
 23 bumper bent.

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- 1 A. Yes, sir.
 2 Q. You didn't miss any work while you were in
 3 the jail; right?
 4 A. I wasn't working at the time.
 5 Q. So you didn't miss any work?
 6 A. No.
 7 Q. What happened after you got out of jail?
 8 A. Started trying to get a lawyer to see what
 9 was going on with the charges.
 10 Q. What charges did you have as a result of
 11 the June 28th incident?
 12 A. Pistol carrying without a permit and
 13 possession of a controlled substance.
 14 Q. What was the controlled substance?
 15 A. I don't know. That's all they told me,
 16 possession of a controlled substance.
 17 Q. They never told you what it was?
 18 A. No, sir.
 19 Q. Did you ever have to go to trial on those
 20 charges?
 21 A. Yes, sir.
 22 Q. What happened at trial?
 23 A. I came to trial with my lawyer. They

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- 1 Q. Can you show me where on the pictures?
 2 A. You can see right there the bumper is bent
 3 up on the light where he rammed me at. And
 4 you can't really tell, but after I got it
 5 back out of the pound, it just drive like
 6 it wasn't the same car no more.
 7 Q. Looks like when you were describing where
 8 he hit you it was the -- was it the back --
 9 A. Yeah. It was pushed up.
 10 Q. -- driver's side right underneath the
 11 taillight there?
 12 A. And it have been also burglarized while it
 13 was in the pound. All the music equipment
 14 was stolen out, radio. The lock was
 15 jimmied out and the side glass was broke.
 16 Q. Where was the impound at?
 17 A. Randy's Impound in Ft. Deposit.
 18 Q. Did you ever get any money out of them or
 19 any redress for what happened to your car?
 20 A. They told me to call Chris West.
 21 Q. What all was taken out of the car?
 22 A. Stereo from the inside, all speakers,
 23 woofers and amps out of the trunk, CDs,

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- 1 et cetera.
 2 Q. Anything else?
 3 A. That's it.
 4 Q. What happened to the gun?
 5 A. I don't even know. All I know they stopped
 6 the case. I don't know anything else about
 7 it.
 8 Q. Did they drop the charge on that too?
 9 A. Yes.
 10 Q. Has Mr. McWilliams ever come to you and
 11 asked for his gun back?
 12 A. He asked me what happened to it. I told
 13 him it was in the car that day and as far
 14 as I know the police got it.
 15 Q. How many times have y'all talked about that
 16 gun?
 17 A. I've seen him on two or three occasions in
 18 the past two years since the incident and
 19 he asked me about whatever happened to his
 20 gun and I told him as far as I know the
 21 police got it.
 22 Q. Well, has he blamed you for losing his gun?
 23 A. I mean, he knows what happened that day.

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- 1 A. No. I don't know anybody who have
 2 claimed. All I know it was vehicles
 3 passing along. I'm not sure who witnessed
 4 it. But not anyone to my knowledge that I
 5 know.
 6 Q. You're talking about after y'all came to a
 7 stop on 21?
 8 A. Yeah. After we came to a stop it was some
 9 vehicles started passing by.
 10 Q. Did you recognize any of those vehicles?
 11 A. I recognized one vehicle that stopped when
 12 I was standing beside the road in my
 13 boxers. It was relative -- a distant
 14 relative that stay down the road from me.
 15 And she turned around. Actually that's
 16 when Chris stopped doing what he was doing
 17 to go get the light and put on top of the
 18 car because she slowed down when she saw me
 19 beside the road and turned around and came
 20 back down the road and they was waving them
 21 on. And after that she went back up the
 22 road. I ain't see her again.
 23 Q. What's her name?

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- 1 He ain't really pointing no blame. He just
 2 asked me was it -- what happened, can he
 3 go -- can he pick it up. I told him I
 4 don't know. I went to court and they
 5 tossed it is all I know.
 6 Q. Do you know if he's ever tried to get it
 7 back?
 8 A. I don't.
 9 Q. When's the last time you talked to him?
 10 A. I would have to say a couple months ago.
 11 Probably a couple months ago last incident.
 12 Q. Did he ask you about the gun then?
 13 A. Yeah.
 14 Q. I'm sorry?
 15 A. Yes, sir.
 16 Q. Do you know who the prosecutor was in your
 17 case?
 18 A. I really don't even know.
 19 Q. Other than, of course, Kevin who was in the
 20 car with you, do you know of anybody else
 21 who claims to have witnessed the chase from
 22 County Road 7 up to where you wound up on
 23 Highway 21?

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- 1 A. Margaret, Margaret Wright.
 2 Q. Margaret Wright?
 3 A. Yes, sir.
 4 Q. And where does she live at? Do you have an
 5 address?
 6 A. Right down the road. Dutch Bend area. I
 7 don't know the number -- address. It's
 8 right down the road from the residence
 9 where I was residing at the time.
 10 Q. Which way?
 11 A. Approximately this far from where I'm at.
 12 It's a caution light there.
 13 Q. She lives down by the caution light past
 14 your house going out towards Wilcox County?
 15 A. Yeah.
 16 Q. Any other vehicles that you recognized pass
 17 by that day?
 18 A. I didn't recognize any other vehicle.
 19 Q. Has anyone come up to you and said they
 20 witnessed your vehicle being knocked off
 21 the road?
 22 A. No, sir.
 23 Q. Do you know of anyone who has claimed to

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- 1 have witnessed that?
- 2 A. No, sir.
- 3 Q. And, again, I'm excluding Kevin because I
4 know he was involved.
5 Anyone besides Margaret Wright that
6 you're aware of who witnessed what happened
7 after you were stopped there at the side of
8 the road?
- 9 A. No, sir.
- 10 Q. Is there anyone else besides you who can
11 testify about the \$500 that you supposedly
12 had on you that day?
- 13 A. As far as I know Kevin. No one else.
- 14 Q. How would Kevin know that you had \$500 on
15 you that day?
- 16 A. Because the motor we was pulling out for
17 one I had took small -- a payment on from
18 my cousin. I had sold him the engine. We
19 was pulling the engine out of his car to
20 put the engine that I sold him in.
- 21 Q. You had already collected payment for that?
- 22 A. He had gave me like \$50 toward it. But he
23 still owed me the balance after we get the
- 1 pocket and had more than \$50 in my pocket.
2 He was staying with me at the time.
- 3 Q. So he just knows that you had more than \$50
4 on you?
- 5 A. Yes, sir.
- 6 Q. Is that what you're telling me?
- 7 A. Yeah.
- 8 Q. To your knowledge, does he know exactly how
9 much you had on you?
- 10 A. No. I don't think he knows exact amount.
11 He just knows I had more than that.
- 12 Q. What damages are you claiming that you're
13 entitled to as a result of Chris West's
14 conduct?
- 15 A. Well, for one I can't seem to acquire
16 employment since this incident. In my
17 field of warehousing every time I apply for
18 a job I'm being turned down since the
19 incident happened. And I usually acquire
20 employment very rapidly. I claim the
21 damage to my vehicle that I have lost, my
22 possessions, lost bond money, loss of time
23 of suffering in jail for something I didn't

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- 1 car back running. We was pulling the dead
2 engine out. But I had sold him an engine,
3 but we hadn't ever got a chance to put it
4 in.
- 5 Q. So that money that you had that day \$50 of
6 it was from him. And who is he? What's
7 his name again?
- 8 A. That would be Herman. His name is Herman,
9 the one that owned the car.
- 10 Q. \$50 from Herman and the other \$450 was left
11 over from your gambling winnings. Is that
12 what your testimony is?
- 13 A. The \$50 he had previously given me -- I had
14 money that I saved. It may have been the
15 \$50. But I had \$1,000 from gambling, you
16 know. That's what was left over from
17 everything, you know.
- 18 Q. So explain to me again how the \$50 for the
19 engine ties in with Kevin knowing that you
20 had \$500 on you.
- 21 A. Because during the time that Herman came to
22 purchase the engine, he gave me \$50 toward
23 it. Kevin would see that I reached in my
- 1 have.
- 2 Q. Let me stop you there real quick. Didn't
3 you tell me that your girlfriend put up the
4 bond money?
- 5 A. She put up half of it. The rest of it was
6 mine.
- 7 Q. How much did you put up?
- 8 A. I put up like 450 --
- 9 Q. \$450?
- 10 A. -- that I recovered from pawning my jewelry
11 and the money left over that I had on the
12 book. She put up the rest.
- 13 Q. I'm sorry. I interrupted you. The bond
14 money and what else?
- 15 A. Like I said, my vehicle damages I lost
16 there. And just me sitting in jail for
17 something I didn't do. I mean, it's just
18 unfair.
- 19 Q. You haven't had any medical expenses;
20 right?
- 21 A. No, sir.
- 22 Q. And you weren't employed at the time?
- 23 A. No, sir.

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- 1 Q. You told me that you still have the knot on
 2 your head. Are there any other permanent
 3 conditions that you have as far as your
 4 body goes as a result of what happened on
 5 June 28th?
- 6 A. Just that -- Just a lot of mental anguish,
 7 just suffering, anxiety attacks. A lot of
 8 nights I can't sleep at night for being
 9 shot at. I already been robbed. It took
 10 me a while to get over that. I had a gun
 11 put in my face behind that. It took me a
 12 while to get over that.
- 13 Q. I'm not asking about your mental condition
 14 right now. I'm just asking about your body
 15 condition. Anything besides the knot on
 16 your head?
- 17 A. Oh, no. Just that knot left when I hit the
 18 steering wheel, as far as that.
- 19 Q. Describe your mental anguish for me that
 20 you're talking about.
- 21 A. I just -- I just have a lot of nights where
 22 I can't sleep, just anxiety attacks a lot
 23 about the whole ordeal and --

- 1 break.
 2 (Brief recess was taken.)
- 3 Q. Just a few more questions, Mr. Marshall,
 4 and we'll be done. With respect to the
 5 anxiety attacks and things that you were
 6 telling me about, have you tried to get any
 7 kind of mental health treatment for that?
- 8 A. Well, right now I'm in dire straits. I
 9 can't afford anything. I haven't sought
 10 any professional help for it. I've just
 11 been trying to deal with the stress, you
 12 know. Somehow I hope it goes away over
 13 time.
- 14 Q. You say you haven't tried. Your
 15 interrogatory responses you told us you
 16 couldn't afford it. I'm just asking you if
 17 you've tried.
- 18 A. No, sir, I haven't.
- 19 Q. Has anybody recommended to you that you try
 20 to get some mental health treatment?
- 21 A. I haven't referred to anybody. It's all on
 22 my own.
- 23 Q. After the robbery that you described for us

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- 1 Q. Describe an anxiety attack for me.
- 2 A. Just nightmares of being shot at and ran
 3 off the road by the police and being
 4 suspect every time I'm being sighted in
 5 Lowndes County by the police. I'm getting
 6 strange looks. Or stopped like the
 7 incident where I went to jail. It was
 8 supposed to be a traffic stop, but they
 9 called Shawn Hutson who was on the drug
 10 task force that day. Every time they lay
 11 eyes on me they harass me about stuff like
 12 that even though I just -- I don't
 13 understand.
- 14 Q. Have you seen Chris West again since that
 15 day?
- 16 A. I haven't seen Chris West since I went to
 17 court in January '06.
- 18 Q. So that's the only time you saw him?
- 19 A. Uh-huh (positive response).
- 20 Q. So he hasn't pulled you over since then;
 21 right?
- 22 A. No. I haven't seen him.
- 23 MR. WILFORD: Let's take a short

- 1 today, did you get any mental health
 2 treatment for that?
- 3 A. No, sir.
- 4 Q. Did you try?
- 5 A. No, sir.
- 6 Q. Did anybody recommend to you that you
 7 needed it?
- 8 A. Just deal with my own -- on my own. I
 9 really don't have anybody but me, so I try
 10 to deal with things among myself. But it
 11 took a little time for me to get my
 12 mind-set back, you know, where I can be out
 13 around people. Everybody just -- I feel
 14 like they out to get me, you know.
- 15 Q. Are you set back right now as you put it?
- 16 A. I'm still having some anxiety attacks at
 17 night. Still can't sleep some nights. But
 18 if I'm somewhere around some people, you
 19 know, I'm fairly being compromised. I kind
 20 of cope with it.
- 21 Q. You told me earlier -- I need to go back on
 22 you a little more when you were first
 23 brought into booking. Chris West said

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<p style="text-align: right;">Page 153</p> <p>1 something about put him in the hole. 2 A. Yes, sir. 3 Q. Were you put in a hole? 4 A. The holding cell up front. That's what I 5 meant. 6 Q. So you were placed in the holding cell? 7 A. Yes, sir. 8 Q. At some point you were put back in the 9 back; is that right? 10 A. I think later that night dressed me out and 11 took me to a cell. 12 Q. So you stayed in a holding cell for a few 13 hours? 14 A. Yes, sir. 15 Q. Is that fair to say? 16 A. Yes, sir. 17 Q. I think that's all I have. Thank you very 18 much. 19 A. Thanks.</p> <p style="text-align: center;">EXAMINATION</p> <p>BY MR. LEWIS:</p> <p>Q. I have one question. When you're standing up there on the side of the road in your</p>	<p style="text-align: right;">Page 155</p> <p>1 REPORTER'S CERTIFICATE 2 STATE OF ALABAMA: 3 MONTGOMERY COUNTY: 4 I, Lyn Daugherty, Certified Shorthand 5 Reporter and Commissioner for the State of Alabama 6 at Large, do hereby certify that I reported the 7 deposition of: 8 RICHARD MARSHALL 9 who was duly sworn by me to speak the truth, the 10 whole truth and nothing but the truth, in the 11 matter of: 12 RICHARD MARSHALL, 13 Plaintiff, 14 vs. 15 CHRIS WEST, in his individual 16 capacity, LASHUN HUTSON, in his 17 individual capacity, 18 Defendants. 19 IN THE UNITED STATES DISTRICT COURT 20 FOR THE MIDDLE DISTRICT OF ALABAMA 21 NORTHERN DIVISION 22 Civil Action No. 2:06-cv-701-ID.CSC 23 on Wednesday, November 14, 2007.</p>
<p style="text-align: right;">Page 154</p> <p>1 boxer shorts, how were you feeling then? 2 A. Humiliated because traffic was coming along 3 and people seeing me beside the road in 4 cuffs in my underwear. 5 MR. LEWIS: Okay. That's it. 6 (Deposition was concluded at 7 approximately 1:55 p.m.)</p> <p>8</p> <p>9</p> <p>10 * * * * *</p> <p>11 FURTHER DEponent SAITH NOT</p> <p>12 * * * * *</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">Page 156</p> <p>1 The foregoing 155 computer-printed pages 2 contain a true and correct transcript of the 3 examination of said witness by counsel for the 4 parties set out herein. The reading and signing is 5 hereby waived. 6 I further certify that I am neither of kin 7 nor of counsel to the parties to said cause nor in 8 any manner interested in the results thereof. 9 This 13th day of December 2007.</p> <p>10</p> <p>11</p> <p>12</p> <p>13 Lyn Daugherty, ACCR #66 14 Expiration Date: 9-30-2008 15 Certified Court Reporter 16 And Commissioner for the 17 State of Alabama at Large</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>

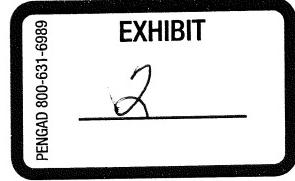
DEPOSITION OF KELVIN CARMICHAEL

November 14, 2007

Pages 1 through 89

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<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE MIDDLE DISTRICT OF ALABAMA 3 NORTHERN DIVISION 4 5 RICHARD MARSHALL, 6 Plaintiff, 7 vs. CIVIL ACTION NO. 8 2:06-cv-701-ID.CSC 9 10 CHRIS WEST, in his individual 11 capacity, LASHUN HUTSON, in his 12 individual capacity, 13 14 Defendants. 15 16 ***** 17 18 DEPOSITION OF KELVIN CARMICHAEL, taken 19 pursuant to stipulation and agreement before Lyn 20 Daugherty, ACCR #66, Certified Court Reporter and 21 Commissioner for the State of Alabama at Large, in 22 the Law Offices of Webb & Eley, 7475 Halcyon Pointe 23 Drive, Montgomery, Alabama, on Wednesday, November 14, 2007, commencing at approximately 1:55 p.m. 24 25 ***** 26</p>	<p style="text-align: right;">Page 3</p> <p>1 STIPULATIONS 2 It is hereby stipulated and agreed by and 3 between counsel representing the parties that the 4 deposition of KELVIN CARMICHAEL is taken pursuant 5 to the Federal Rules of Civil Procedure and that 6 said deposition may be taken before Lyn Daugherty, 7 Certified Shorthand Reporter, and Commissioner for 8 the State of Alabama at Large, without the 9 formality of a commission, that objections to 10 questions other than objections as to the form of 11 the question need not be made at this time but may 12 be reserved for a ruling at such time as the said 13 deposition may be offered in evidence or used for 14 any other purpose by either party provided for by 15 the Statute. 16 It is further stipulated and agreed by and 17 between counsel representing the parties in this 18 case that the filing of said deposition is hereby 19 waived and may be introduced at the trial of this 20 case or used in any other manner by either party 21 hereto provided for by the Statute regardless of 22 the waiving of the filing of the same. 23 It is further stipulated and agreed by and</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES 2 FOR THE PLAINTIFF: 3 Mr. Jay Lewis Mr. Fred L. Clements 4 LAW OFFICES OF JAY LEWIS Attorneys at Law 5 847 South McDonough Street Montgomery, Alabama 36104 6 7 FOR THE DEFENDANT WEST: 8 Mr. Gary Wilford Mr. Daryl L. Masters 9 WEBB & ELEY, P.C. Attorneys at Law 10 7475 Halcyon Pointe Drive P.O. Box 240909 11 Montgomery, Alabama 36124 12 13 ALSO PRESENT: Mr. Richard Marshall 14 15 ***** 16 EXAMINATION INDEX 17 18 KELVIN CARMICHAEL 19 20 BY MR. WILFORD 4 21 22 EXHIBIT INDEX 23 24 Defendant MAR 25 13 Photograph 73</p>	<p style="text-align: right;">Page 4</p> <p>1 between the parties hereto and the witness that the 2 signature of the witness to this deposition is 3 hereby waived. 4 5 ***** 6 KELVIN CARMICHAEL 7 The witness, after having first been duly sworn 8 to speak the truth, the whole truth and nothing but 9 the truth testified as follows: 10 EXAMINATION 11 BY MR. WILFORD: 12 Q. Would you please state your name for the 13 record, sir. 14 A. Kelvin Carmichael. 15 Q. Could you spell your first name for me, 16 please. 17 A. K-E-L-V-I-N. 18 Q. Is it pronounced Kevin or Kelvin? 19 A. Kelvin. 20 Q. Mr. Carmichael, have you ever given a 21 deposition before? 22 A. No. 23 Q. What we've got here is we've got a court reporter who is going to be taking down</p>

	Page 5	Page 7
1	every word you and I say and anybody else 2 says here in the courtroom today -- I'm 3 sorry -- this conference room today. And 4 so it's going to be important that we stick 5 to certain rules as we're going through 6 this thing. And one of those is that I 7 need you to wait until I finish asking you 8 a question before you answer it; all right?	1 A. The day before we had to go meet at his 2 office. 3 Q. Who is his office? 4 A. We went to talk to him because they wanted 5 to see me. 6 Q. You're saying him. I don't know who him 7 is. 8 A. I don't know his -- 9 Q. This gentleman sitting next to you right 10 here? 11 A. Yes. 12 Q. From Mr. Lewis's office? 13 A. Yes. 14 Q. And y'all spoke about this deposition here 15 today? 16 A. They just told us that we had to come here 17 and how to get here and all that. 18 Q. Did you talk about your testimony with him? 19 A. No. 20 Q. Did they ask you about the facts of the 21 case? 22 A. No. 23 Q. Did you look at any documents?
1	A. All right.	
2	Q. And as we kind of go through this, if you 3 do that, hopefully I'll catch it and remind 4 you of it. If I ask you a question and you 5 don't understand the question, let me know 6 and I'll be happy to rephrase it for you.	
1	A. All right.	
2	Q. Because what I'm going to do is if I ask 3 you a question and you answer me, I'm going 4 to assume you understood my question. Is 5 that fair?	1 A. No. 2 Q. What's your date of birth? 3 A. September 25th, 1980. 4 Q. That makes you 27; is that right? 5 A. Yes.
6	A. Yes.	6 Q. Where were you born? 7 A. Montgomery.
7	Q. If for whatever reason you need a break, 8 let me know. We can go ahead and take a 9 break. I think you noticed during 10 Mr. Marshall's deposition we took a couple 11 of breaks. And all you've got to do is 12 just let me know and we can do that; all 13 right?	8 Q. Do you work right now? 9 A. Yes.
14	A. All right.	10 Q. Where do you work? 11 A. At Quincy's Triple Seven in Shorter.
15	Q. Okay. In preparing for your deposition 16 today, did you speak with anyone?	12 Q. How long have you been at Quincy's Triple 13 Seven? 14 A. Almost three weeks.
17	A. No.	15 Q. And what do you do for them? 16 A. Housekeeping.
18	Q. You didn't speak with Mr. Marshall?	17 Q. Did you work before Quincy's Triple Seven? 18 A. Yes.
19	A. He called me and told me that we had to 20 come here.	19 Q. Who did you work for? 20 A. I worked for Big Lots.
21	Q. Is that all he told you?	21 Q. When did you work for Big Lots? 22 A. About four years. But up until then I've 23 Q. When did he call you?
		been working with my uncle painting. Up

	Page 9	Page 11
1	until now --	
2	Q. So you were working -- I'm sorry.	1 Q. Ever been to trade school?
3	A. Up until now when I stopped working at Big	2 A. No.
4	Lots. I think it was in '05, '06,	3 Q. How long have you lived on Norman Bridge
5	something like that.	4 Road?
6	Q. That's when you started or when you	5 A. About three months.
7	stopped?	6 Q. Where did you live before that?
8	A. When I stopped.	7 A. Davenport Drive.
9	Q. When did you start with them?	8 Q. Is that in Montgomery?
10	A. I think it was in '01, '02.	9 A. Yes.
11	Q. And you said after you left Big Lots you	10 Q. What's the street number there?
12	worked with your uncle?	11 A. I'm not really sure of that. I just know
13	A. Painting.	12 it's Davenport because I was staying there
14	Q. Did you work at Big Lots the same time	13 with a girl. But it wasn't nothing but
15	Mr. Marshall did?	14 like a year.
16	A. Huh-uh (negative response).	15 Q. How long did you live on Davenport Drive?
17	Q. Is that a no?	16 A. About a year.
18	A. No.	17 Q. So that would have been about '06; is that
19	Q. What about before Big Lots, who did you	18 right?
20	work for, if anybody, then?	19 A. Yes.
21	A. Long John Silver.	20 Q. And where did you live before that?
22	Q. Where at?	21 A. In Stone Crossing.
23	A. On Norman Bridge Road.	22 Q. Where is that?
		23 A. On Woodley Road.
		Page 10
1	Q. How long did you work for them?	1 Q. How long did you live in Stone Crossing?
2	A. I worked for them when I was in school	2 A. About six months.
3	since about '98.	3 Q. Were you living in Stone Crossing at the
4	Q. Why did you leave Long John Silver's?	4 time of the traffic stop that led to this
5	A. Because I started working at Big Lots.	5 lawsuit?
6	Q. And then why did you leave Big Lots?	6 A. No.
7	A. I got terminated.	7 Q. Where were you -- Then let's keep going
8	Q. And why did you get terminated?	8 back. Where did you live before Stone
9	A. Missing too many days.	9 Crossing?
10	Q. Have you ever been married?	10 A. I had my own apartment in the Colonies.
11	A. No.	11 But it's Cypress Court now. They changed
12	Q. Where do you live?	12 the name of it. It's on -- what street --
13	A. Norman Bridge Road.	13 Troy Highway, right off Troy Highway.
14	Q. What's the address there?	14 Q. Is that where you were living at the time
15	A. 3468 Apartment A.	15 of the traffic stop?
16	Q. Did you graduate from high school?	16 A. No. I think I had got put out my apartment
17	A. Yes.	17 and I had went to stay with my grandmother
18	Q. What high school did you graduate from?	18 for a minute.
19	A. Sidney Lanier.	19 Q. So you were living with your grandmother at
20	Q. And when did you graduate?	20 that time?
21	A. '99.	21 A. I was just staying with her for a minute.
22	Q. Have you ever been to college?	22 Q. Well, you have to explain to me what you
23	A. No.	mean for a minute. How long a time are we

1 talking about?
 2 A. It was probably about two, three months,
 3 something like that.
 4 Q. Was there anyplace that you lived at
 5 between your grandmother's house and
 6 Cypress Court?
 7 A. No.
 8 Q. Where is your grandmother's house at?
 9 A. In Farmersville.
 10 Q. What's the address there?
 11 A. I don't know. I just know it's on
 12 Youngblood Road. I don't know the address.
 13 Q. So that's not too far from where
 14 Mr. Marshall was living at the time?
 15 A. Not that far.
 16 Q. About how far would you say?
 17 A. Maybe five, 10 miles, I guess.
 18 Q. Are you and Mr. Marshall related?
 19 A. Yes.
 20 Q. How are you related?
 21 A. My cousin.
 22 Q. Do you have any children?
 23 A. Yes.

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1 Q. Have you ever been a party to a lawsuit?
 2 A. No.
 3 Q. Never been sued?
 4 A. No.
 5 Q. Never sued anybody?
 6 A. No.
 7 Q. Have you ever been arrested before?
 8 A. Yes.
 9 Q. How many times have you been arrested?
 10 A. Maybe five times, I guess. Just tickets.
 11 Q. Okay. I'm not talking about -- What kind
 12 of tickets are you talking about?
 13 A. Like tickets that I got I didn't pay and
 14 they stopped me.
 15 Q. So you've been arrested five times for not
 16 paying tickets?
 17 A. Yes.
 18 Q. Is that what you're telling me?
 19 When was the first time you were
 20 arrested?
 21 A. That's kind of hard to say. I don't
 22 remember how long that's been. Maybe 2000.
 23 Q. Where were you arrested in 2000?

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1 Q. How many?
 2 A. One.
 3 Q. How old is the child?
 4 A. She's five, fixing to be six.
 5 MR. WILFORD: Can we get the same
 6 stipulation with this witness,
 7 Jay, on the relatives?
 8 MR. LEWIS: Right.
 9 Q. Do you go to church?
 10 A. No.
 11 Q. Have you ever gone to church?
 12 A. Yes.
 13 Q. Last time you went to church where did you
 14 go?
 15 A. Morning Pilgrim.
 16 Q. Where is that at?
 17 A. On Rosa Parks.
 18 Q. In Montgomery?
 19 A. Yes.
 20 Q. Have you ever been a member of a union?
 21 A. No.
 22 Q. Any kind of social organization?
 23 A. No.

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1 A. Montgomery.
 2 Q. Who was it that arrested you? City
 3 police? County police?
 4 A. City.
 5 Q. And what specifically did they arrest you
 6 for?
 7 A. Warrants for not -- unpaid ticket.
 8 Q. What was the unpaid ticket?
 9 A. I think it was a noise ordinance ticket.
 10 Q. Anything else besides the noise ordinance
 11 ticket?
 12 A. At that time?
 13 Q. Yes, sir.
 14 A. Just speeding tickets. I got arrested
 15 like --
 16 Q. I'm just asking you about the 2000 arrest
 17 right now. We're going to go through each
 18 of them.
 19 A. Not that I remember.
 20 Q. What happened with that arrest? Were you
 21 put in jail?
 22 A. Yes.
 23 Q. How long did you stay in jail?

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Deposition of Kelvin Carmichael

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	Page 17	Page 19
1 A. A few hours.		1 A. Couple hours.
2 Q. Did you pay the tickets?		2 Q. Was it the Montgomery City Jail?
3 A. Yes.		3 A. Yes.
4 Q. Is that how you got out?		4 Q. And what happened with the driving while suspended charge?
5 A. Yes.		5 A. I had to pay a fine.
6 Q. What about your second arrest, when was that?		6 Q. Did you ever get your license back?
7 A. I think it was an unpaid speeding ticket.		8 A. No.
8 Q. Do you remember when that was?		9 Q. So sitting here today you don't have a driver's license?
10 A. No.		10 A. No.
11 Q. How long after the 2000 arrest was it?		12 Q. The fourth arrest, when did that take place?
12 A. Maybe a year, year later.		13 A. I was arrested about -- I think it was about two, three months ago.
13 Q. So maybe sometime in '03?		14 Q. Sometime in '07?
14 A. Yeah. Yes.		15 A. Yes.
15 Q. And where were you arrested then?		16 Q. What was that arrest for?
16 A. Montgomery.		17 A. Smoking in a nightclub.
17 Q. By the Montgomery Police Department?		18 A. Smoking in a nightclub?
18 A. Yes.		19 A. (Witness nods head).
19 Q. Spend time in jail on that one?		20 Q. Where was that at?
20 A. Couple of hours.		21 A. The name of the club? The Martini Bar.
21 Q. Did you pay the tickets?		
22 A. Yes.		
23 Q. How about arrest number three, when did		
	Page 18	Page 20
1 that take place?		1 Q. Is that in Montgomery?
2 A. Probably was another year later.		2 A. Yes.
3 Q. So sometime in '04?		3 Q. Who arrested you?
4 A. Yes.		4 A. I have no idea, because it wasn't the city and it wasn't the county. But they took me to the county, though.
5 Q. And who arrested you that time?		5 Q. The Montgomery County Jail?
6 A. Montgomery city.		6 A. Yes.
7 Q. And what was that arrest for?		7 Q. What happened when you got to the Montgomery County Jail?
8 A. I think it was -- I had a driving while suspended I didn't pay.		8 A. I stayed there a couple hours and got out.
9 Q. What was your driver's license suspended for?		9 Q. Was that on bond?
10 A. A speeding ticket.		10 A. Uh-huh (positive response).
11 Q. A speeding ticket?		11 Q. What's the bond for smoking in a bar?
12 A. Yes.		12 A. I think it was about, yeah, 150.
13 Q. How did you get your license suspended for a speeding ticket?		13 Q. I take it those charges are still pending --
14 A. Not paying the ticket.		14 A. Uh-huh (positive response).
15 Q. All right. What happened as a result of the '04 arrest?		15 Q. -- or that charge is still pending?
16 A. What happened?		16 A. I already went to court for it.
17 Q. Yes, sir. Were you put in jail again?		17 Q. What happened?
18 A. Yes.		18 A. They put me in a class.
19 Q. How long were you in jail that time?		19 Q. Did you have to pay a fine?

<p style="text-align: right;">Page 21</p> <p>1 A. Yes. 2 Q. How much? 3 A. I think it was like about \$400 and I've got 4 to pay for the class. 5 Q. What is the class on? Do you know? 6 A. Put me in a class with alcoholics and 7 stuff. 8 Q. Okay. The fifth arrest, what was that? 9 A. I haven't been arrested since that. 10 Q. So really it was four times and not five 11 times you've been arrested? 12 A. Yeah. It ain't been nothing but just 13 tickets.</p> <p>14 MR. WILFORD: Off the record. 15 (Off-the-record discussion.)</p> <p>16 Q. Other than this class that you're going to 17 have to attend for smoking in a bar, have 18 you ever been treated for alcohol or drug 19 addiction?</p> <p>20 A. No. 21 Q. Have you ever been treated for mental 22 illness? 23 A. No.</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. Watching who take a motor out of the car? 2 A. Two of my cousins. 3 Q. And who were the two cousins? 4 A. His name is -- because we call him by his 5 nickname. His name is Herman, though. 6 Q. And who else? 7 A. And my other cousin Steven. 8 Q. Steven? 9 A. Yes. 10 Q. Do you know what Herman and Steven's last 11 names are? 12 A. I know Steven's last name is Howard. I'm 13 not sure what Herman's last name is. 14 Q. Was there anybody else present that day? 15 A. Yes. 16 Q. Who? 17 A. Richard Marshall. 18 Q. Anybody else? 19 A. No. 20 Q. All right. Where were you taking this -- 21 or where were they taking this motor out 22 at? 23 A. At my aunt's house.</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. You know the event that we're here on 2 today; right? 3 A. Yes. 4 Q. Something happened out on Highway 21 in 5 Lowndes County? 6 A. Yes. 7 Q. Would you agree with me that that happened 8 on June 28th of 2005? 9 A. I'm not sure of the date. 10 Q. You don't have an independent recollection 11 of the date? 12 A. No. 13 Q. Would you have any reason to disagree that 14 June 28th, 2005 was the date this occurred? 15 A. I'm just not sure of the date. 16 Q. That's fine. Do you remember what you were 17 doing the day that this occurred? 18 A. Before or after? 19 Q. Before. 20 A. Yes. 21 Q. What were y'all doing? What were you 22 doing? Excuse me. 23 A. Watching them take a motor out of the car.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. What's your aunt's name? 2 A. Gwendolyn Howard. 3 Q. Where does she live? Where did she live at 4 the time? Excuse me. 5 A. Probably about a mile or two from my 6 grandma's house. 7 Q. That's in Farmersville? 8 A. Yes. 9 Q. When did you first get to your aunt's house 10 that morning? 11 A. I'm really not sure what time it was. I 12 know it was like -- kind of like in the 13 morning. Maybe ten, nine, something like 14 that. 15 Q. How did you get there? 16 A. In the car with Richard. 17 Q. How did you come to be in the car with 18 Richard? 19 A. Because I spent the night at his house that 20 night. 21 Q. The night before? 22 A. Yes. 23 Q. What did y'all do the night before?</p>

	Page 25		Page 27
1 A. Nothing. Just at his house.		1 was?	
2 Q. And y'all didn't go anywhere?		2 A. No.	
3 A. No.		3 Q. Were y'all meeting anybody at Richard's	
4 Q. Did y'all have anything to drink that		4 house?	
5 night?		5 A. No.	
6 A. No.		6 Q. Between your aunt's house and the time that	
7 Q. Do any drugs that night?		7 you first encountered my client in his car,	
8 A. No.		8 did y'all stop anywhere?	
9 Q. What time did y'all get up on the morning		9 A. No.	
10 of the 28th? And I understand that you		10 Q. Who was driving the car?	
11 don't have an independent recollection it		11 A. Richard.	
12 was the 28th. I'm just going to use that		12 Q. Where were you at in the car?	
13 as a kind of shorthand for right now.		13 A. In the passenger's side.	
14 A. Maybe eight, something like that.		14 Q. Are there any seat belts in that car?	
15 Q. Did you go straight to your aunt's house		15 A. Yes.	
16 from there?		16 Q. Were you wearing yours?	
17 A. Yes.		17 A. Yes.	
18 Q. Did y'all have any breakfast that morning?		18 Q. Was Richard wearing his?	
19 A. No.		19 A. Yes.	
20 Q. How long did it take to take that motor out		20 Q. So if Richard says he wasn't, he was	
21 of the car?		21 mistaken?	
22 A. Maybe an hour. Probably less than that.		22 A. He be telling me to put mine on, so I'm	
23 Q. Were they doing anything else while they		23 pretty sure he had his on.	
	Page 26		Page 28
1 were taking the motor out?		1 Q. Do you actually remember him having his	
2 A. Nothing but talking and laughing.		2 seat belt on, or you're just pretty sure?	
3 Q. Anybody have a beer?		3 A. I'm sure, because he told me to put mine	
4 A. No.		4 on. That's how he drive with his seat belt	
5 Q. Nothing to drink at all?		5 on.	
6 A. No.		6 Q. Was there any alcohol in that car?	
7 Q. All right. What happened after the motor		7 A. No.	
8 was out of the car?		8 Q. Let me show you what was previously marked	
9 A. Me and my cousin got in the car and we was		9 as Defendant's Exhibit 3. What was in that	
10 on our way back to his house.		10 flask?	
11 Q. In Richard's car?		11 A. Nothing.	
12 A. Yes.		12 Q. Do you know what had been in that flask?	
13 Q. What kind of car did Richard have?		13 A. No. But I know nothing was in it, though.	
14 A. Blue Nova.		14 Q. That flask was in the car that day, though;	
15 Q. I'm going to show you what was previously		15 right?	
16 marked as Defendant's Exhibit 2 to Richard		16 A. Yeah.	
17 Marshall's deposition. Is that Richard's		17 Q. Whose Swishers were those?	
18 car?		18 A. I don't know.	
19 A. Yes.		19 Q. Were they yours?	
20 Q. What were you going to do when you got back		20 A. No.	
21 to Richard's house?		21 Q. That was Richard's car; right?	
22 A. Nothing. Watch TV.		22 A. Huh?	
23 Q. Do you remember what day of the week it		23 Q. That was Richard's car; right?	

<p style="text-align: right;">Page 29</p> <p>1 A. Yes. 2 Q. Do you see anything in Defendant's Exhibit 3 that belonged to you? 4 A. No. 5 Q. You see that gun in Defendant's Exhibit 3; 6 right? 7 A. Yes. 8 Q. Whose gun was that? 9 A. I don't know. 10 Q. Was it in the car when you got in the car 11 that morning? 12 A. Yes. 13 Q. Where was it when you got in the car that 14 morning? 15 A. On the seat. 16 Q. About where it is in Defendant's Exhibit 3? 17 A. Yes. 18 Q. Is that the front seat of Richard's car in 19 Defendant's Exhibit 3? 20 A. Yes. 21 Q. Is that gun loaded? 22 A. I don't know. 23 Q. Did you ever pick that gun up?</p>	<p style="text-align: right;">Page 31</p> <p>1 Richard with a gun? 2 A. Yes. 3 Q. So that's the first time you've ever seen 4 him with a gun and you didn't ask him 5 anything about it? 6 A. No. 7 Q. Do you know if Richard had any money on him 8 that day? 9 A. I know he had just sold my cousin a motor, 10 but I don't know what he sold it for, 11 though. 12 Q. Did you see any money change hands? 13 A. Not really. But he told me that my cousin 14 was fixing to buy it. That's why we went 15 over there to watch him take it out. 16 Q. But you didn't see him give him any money; 17 right? 18 A. Not at the time. 19 Q. Did you ever see him give him any money 20 later? 21 A. No. I know my cousin told me he bought the 22 motor from him. 23 Q. Which cousin was that?</p>
<p style="text-align: right;">Page 30</p> <p>1 A. I just seen it and I ain't asked nothing 2 about it because it wasn't my business, 3 so ... 4 Q. The gun looks to me like it's pointing 5 toward the passenger's side of the car. 6 Does that look like it's pointing that way 7 to you? 8 A. Yes. 9 Q. Make you nervous having a gun pointed at 10 you? 11 A. No. 12 Q. So you didn't pay it no mind? 13 A. No. 14 Q. All right. Did you ever see Richard with 15 that gun before? 16 A. No. 17 Q. That's the first time you saw it was that 18 day? 19 A. Yes. That's why I didn't ask him nothing 20 about it. 21 Q. Did Richard usually have a gun? 22 A. No. 23 Q. Was that the first time you had ever seen</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Herman. 2 Q. Did you ever actually see Richard with any 3 money that day? 4 A. Yes. 5 Q. When did you see him with money? 6 A. That morning before we left. 7 Q. How much did he have on him? Were you able 8 to see how much? 9 A. No. 10 Q. Were you able to see any particular bill? 11 A. No. 12 Q. How was he carrying the money? 13 A. In his pocket. 14 Q. Did he just take it out and show it to you? 15 A. No. We were fixing to go to the store and 16 get some gas, but he just said we're going 17 to go ahead on down there because they were 18 waiting on us. 19 Q. Okay. So how did you seeing his money come 20 into play there? 21 A. Because he was counting it because he said 22 he was fixing to go get gas, but he was 23 going to go ahead on and go to my auntie's</p>

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<p style="text-align: right;">Page 33</p> <p>1 house first and he would just get it when 2 we left there. 3 Q. All right. When was the first time you 4 noticed the car that my client was in? 5 A. When they pulled up on the side with a 6 pistol. 7 Q. Where was that at? 8 A. The same road that you turn off to go to my 9 grandmother's house. It wasn't 21. I'm 10 not for sure what the name of the road 11 was. But I remember them pulling up on the 12 side of us with a gun. 13 Q. That's the first time you saw them? 14 A. Yeah. 15 Q. You didn't see them at any point before 16 that? 17 A. No. 18 Q. What happened when they pulled up alongside 19 of you? 20 A. He was pointing the gun and pointing at the 21 side of the road and telling us to pull 22 over. 23 Q. Who was he?</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. Just a mustache? 2 A. I think he did. He might have had a 3 full -- I know he just had a little beard 4 or something, I guess. I wasn't really 5 looking at him like that. 6 Q. You got a chance to look at him later, 7 though; right? 8 A. Uh-huh (positive response). 9 Q. Were you able to see the driver? 10 A. Yes. 11 Q. Did you know who the driver was prior to 12 that time? 13 A. No. 14 Q. Have you since learned who the driver was? 15 A. Yes. 16 Q. Who was the driver? 17 A. Guy named Chris West. 18 Q. And you didn't know Chris prior to this? 19 A. No. I never saw either one of them. 20 Q. Did you know of either one of them prior to 21 this? 22 A. No. 23 Q. All right. So the car pulls up next to you</p>
<p style="text-align: right;">Page 34</p> <p>1 A. The guy on the passenger's side. 2 Q. Do you know who was on the passenger's 3 side? 4 A. No. I never saw them before. They had on 5 regular clothes. 6 Q. Have you learned since then who was on the 7 passenger's side? 8 A. I know now he was the police, but I don't 9 know his name. 10 Q. That's what I'm asking you. Have you found 11 out what his name was? 12 A. No. 13 Q. Can you describe him for me? 14 A. I know he was like -- he wasn't that tall. 15 Had a low haircut all over. Kind of slim 16 guy. He wasn't that big, not like the 17 driver. 18 Q. Black guy? White guy? 19 A. Who? The passenger? 20 Q. Yes, sir. 21 A. Black guy. 22 Q. Did he have any facial hair? 23 A. Yes. I think he had a mustache.</p>	<p style="text-align: right;">Page 36</p> <p>1 and you said he had a gun? 2 A. Yeah. 3 Q. What kind of gun are we talking about? 4 A. I just know it was black. Because when I 5 seen him, I asked my cousin who is it, and 6 he say he don't know, might be somebody 7 trying to rob him or something. So -- I 8 don't know. 9 Q. Were you able to hear your cousin say that? 10 A. Huh? 11 Q. You were able to hear Richard say that? 12 A. When I asked him who is it, I heard him say 13 he didn't know. 14 Q. What hand did the person with the gun have 15 the gun in? 16 A. I think it was his right because he was 17 pointing with his -- this arm right here 18 (indicating). He was telling us to pull 19 over. 20 Q. How was he holding the gun? 21 A. Pointing it at us through his window. 22 Q. You say he was pointing it at you and using 23 his other hand to point to the side of the</p>

<p style="text-align: right;">Page 37</p> <p>1 road?</p> <p>2 A. Yes.</p> <p>3 Q. What did Richard do, if anything, when he 4 did that?</p> <p>5 A. We speeded up because we didn't know who 6 they was. They was in regular clothes in a 7 regular car, so we speeded up.</p> <p>8 Q. What happened after you sped up? Let me 9 back up. I'm sorry. Did Richard say 10 anything to them?</p> <p>11 A. No, not that I remember.</p> <p>12 Q. Was there anything going on that would 13 prevent you from hearing what Richard might 14 have said to them?</p> <p>15 A. He had the radio on, but I would have heard 16 if he said anything. I mean, he didn't say 17 nothing to them because they had their 18 windows up and his window was down -- well, 19 our window was down.</p> <p>20 Q. Richard's window was down, but their window 21 was up?</p> <p>22 A. (Witness nods head).</p> <p>23 Q. So he's pointing through the glass with the</p>	<p style="text-align: right;">Page 39</p> <p>1 A. They got behind us.</p> <p>2 Q. Did you watch them?</p> <p>3 A. I was looking in the rear view mirror, like 4 the little mirror on the side. But I was 5 just looking at the car. I wasn't watching 6 them.</p> <p>7 Q. You didn't turn around and look at them?</p> <p>8 A. Huh-uh (negative response). I was trying 9 to tell him to go because I thought it was 10 somebody trying to rob us, too, or rob him 11 and they had a gun. I ain't trying to get 12 shot.</p> <p>13 Q. Have you ever heard of any problems like 14 that happening in that part of the county 15 before?</p> <p>16 A. What? People getting robbed?</p> <p>17 Q. Well, people coming up alongside in cars 18 and trying to rob people in a car.</p> <p>19 A. No. But I'm from Montgomery. I know it 20 happens.</p> <p>21 Q. Okay. So you're watching in the side view 22 mirror. What happens next?</p> <p>23 A. We turned on the road to go home.</p>
<p style="text-align: right;">Page 38</p> <p>1 gun? Is that what you're telling me?</p> <p>2 A. Yes.</p> <p>3 Q. What kind of car did they have?</p> <p>4 A. It was a Lincoln.</p> <p>5 Q. Do you remember anything else about the 6 car?</p> <p>7 A. I think it was like a dark gray.</p> <p>8 Q. Was it a newer one or an older one?</p> <p>9 A. It was a newer one, but not that new. I 10 think it was like about '98, '99. It 11 wasn't no old model.</p> <p>12 Q. Did you see anything that stood out on the 13 car; antennas, license plates, anything 14 like that?</p> <p>15 A. No. It was just regular car.</p> <p>16 Q. Did you see any blue lights on the vehicle?</p> <p>17 A. No.</p> <p>18 Q. The road that you were on when the car came 19 up alongside of you, is that a two-lane or 20 four-lane or some other lane?</p> <p>21 A. Two.</p> <p>22 Q. All right. So you said Richard sped up. What happened after he sped up?</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. And what road is that that you turned on to 2 go home?</p> <p>3 A. I think that's -- I think it's 21.</p> <p>4 Q. Which way did you turn?</p> <p>5 A. Right.</p> <p>6 Q. Is that an intersection there that you 7 turned at?</p> <p>8 A. Yes.</p> <p>9 Q. Is there a stop sign, traffic light, 10 something there?</p> <p>11 A. A yellow flashing light.</p> <p>12 Q. Did Richard stop at that light?</p> <p>13 A. He yield. He slowed down. But then we 14 took off again because we didn't know who 15 they was.</p> <p>16 Q. Did he ever actually stop, though, at the 17 intersection?</p> <p>18 A. No. Because there's a yield sign.</p> <p>19 Q. Was there any traffic around?</p> <p>20 A. No. Not at that time.</p> <p>21 Q. Had you seen any other cars besides yours and the Lincoln --</p> <p>22 A. No.</p>

	Page 41		Page 43
1	Q. -- up to that point?	1	A. After they hit us the second time that's
2	A. No.	2	when I looked back.
3	Q. What happened when you made the right onto	3	Q. After they hit you the second time?
4	Highway 21?	4	A. (Witness nods head).
5	A. We took off again.	5	Q. Prior to them hitting you, did you turn
6	Q. After the Lincoln fell in behind you before	6	around and look back at them?
7	the turn, did y'all -- you and Richard talk	7	A. No.
8	about anything up until you turned right on	8	Q. What happened when, as you said, they ran
9	21?	9	into you the first time?
10	A. No. Because I was really scared. I was	10	A. I just was like, they done hit us. Because
11	wondering myself who they was.	11	by the time I was fixing to turn around
12	Q. You did say you were urging him to go on;	12	again and they hit us again. That's when I
13	right?	13	turned around and looked.
14	A. Because I didn't know who it was, yes.	14	Q. Let's just keep talking about the first
15	Q. What did you tell him?	15	time for right now; okay?
16	A. I just kept asking him who that is, and he	16	A. Uh-huh (positive response).
17	just kept shrugging his shoulders he didn't	17	Q. How hard a hit was it?
18	know. And I didn't know, so I just told	18	A. Enough to turn the back of the car a little
19	him, man, don't let them catch us because	19	bit.
20	we don't know who they is -- well, I don't	20	Q. Turn it how?
21	know who they is and then they're pointing	21	A. Like the back end swerved a little, like
22	a gun too.	22	swerved to the right like they were trying
23	Q. Did Richard appear to be mad?	23	to knock us off the road.
	Page 42		Page 44
1	A. No.	1	Q. Did you actually see the Lincoln hit you?
2	Q. He didn't yell at anybody up to that point?	2	A. I know it was them because they were right
3	A. No.	3	behind us.
4	Q. All right. You make the right-hand turn	4	Q. I understand that. What I'm asking you is,
5	onto Highway 21. What happens next?	5	were you able to see them actually hit
6	A. We rode down a little while and they were	6	you? Were you looking at them when they
7	still behind us. And they ran to the back	7	hit you?
8	of the car.	8	A. Not the first time.
9	Q. So they followed behind you and then just	9	Q. So you said it knocked -- it swerved the
10	ran into the back of the car?	10	back end a little bit?
11	A. Yes.	11	A. (Witness nods head).
12	Q. How long from the time you turned right	12	Q. Did it do anything else to the car?
13	onto 21 until they ran into the back of the	13	A. No.
14	car?	14	Q. They hit you a second time; is that right?
15	A. Maybe it was about a mile.	15	A. Yes.
16	Q. How fast was Richard going at that point?	16	Q. How much time passed between the first time
17	A. I don't know.	17	they hit you and the second time they hit
18	Q. Did he go faster than he had been before he	18	you?
19	turned off, about the same speed or slower?	19	A. Maybe a couple of seconds.
20	A. It was about the same speed.	20	Q. And did you tell me that you were able to
21	Q. Did you turn around at any point while you	21	turn around then and look at the car?
22	were on Highway 21 to look at the car	22	A. After they hit us the second time?
23	behind you?	23	Q. No. Between the first time and the second

<p style="text-align: right;">Page 45</p> <p>1 time.</p> <p>2 A. I was fixing to look when they hit us the 3 first time. But by the time I looked, they 4 hit us again. And I turned back around to 5 make sure we wasn't fixing to go off the 6 road. Then I turned back and looked again.</p> <p>7 Q. After the second time?</p> <p>8 A. Yes.</p> <p>9 Q. Tell me about the second hit. How hard was 10 it?</p> <p>11 A. Probably about the same as the first.</p> <p>12 Q. Did the speed of Richard's car change 13 between the first time and the second time?</p> <p>14 A. A little, because when they hit us, it was 15 like it knocked us forward a little bit.</p> <p>16 Q. So up until the second time they hit you, 17 you still hadn't had a chance to turn 18 around and look back; right?</p> <p>19 A. Huh-uh (negative response). I almost did 20 after the first one. But when they hit us 21 I turned back around to make sure we wasn't 22 going off the road.</p> <p>23 Q. After they hit you the second time, what</p>	<p style="text-align: right;">Page 47</p> <p>1 grabbing him around his neck and people 2 were stopping. Then he grabbed something 3 and put it on top of the car.</p> <p>4 Q. All right. At what point did you tell 5 Richard that it was the police behind you?</p> <p>6 A. I said, I think it's the police, and then 7 he started talking in the thing. But by 8 then he had hit us again and knocked us off 9 the road.</p> <p>10 Q. Did you start to say that before that third 11 hit or after the third hit?</p> <p>12 A. It was like time I was saying it he was 13 running into us again. And that time he 14 knocked us off the road.</p> <p>15 Q. So you did recognize then that it was the 16 police that was behind you?</p> <p>17 A. I ain't -- I wasn't sure it was the 18 police. I said I think it's the police 19 because I saw him talking in a CB. And I'm 20 pretty sure if somebody robbing you they 21 probably wouldn't have no CB.</p> <p>22 Q. Had Richard ever said anything to you 23 before about being robbed?</p>
<p style="text-align: right;">Page 46</p> <p>1 happened?</p> <p>2 A. That's when I turned around and looked. 3 And it looked like he was on the radio or 4 something. So I said --</p> <p>5 Q. What made you think he was on the radio?</p> <p>6 A. Because I saw him with something in his 7 hand talking in it.</p> <p>8 Q. Can you describe for me what it was in his 9 hand that he was talking into?</p> <p>10 A. Looked like a CB.</p> <p>11 Q. Did you see anything else besides the CB -- 12 what you described as looking like a CB?</p> <p>13 A. No.</p> <p>14 Q. How long were you able to look back?</p> <p>15 A. Maybe a couple seconds, because that's when 16 he hit us again and he went off the road 17 that time.</p> <p>18 Q. Who was it that was talking on the CB? Was 19 it the driver or the passenger?</p> <p>20 A. The passenger.</p> <p>21 Q. Did you see any blue lights at that time?</p> <p>22 A. No. I didn't see any lights until after 23 people was pulling over and they were</p>	<p style="text-align: right;">Page 48</p> <p>1 A. No.</p> <p>2 Q. So you didn't know before that day that 3 he'd said he had been robbed before?</p> <p>4 A. No.</p> <p>5 Q. From the time you turned onto Highway 21 6 until they hit you that third time, did you 7 see any other cars on the road?</p> <p>8 A. No.</p> <p>9 Q. Did you see Richard throw something out the 10 window?</p> <p>11 A. No.</p> <p>12 Q. You did see his arm out the window, though; 13 right?</p> <p>14 A. He rides with his arm on his mirror.</p> <p>15 Q. Well, was he riding with his arm on the 16 mirror at the time?</p> <p>17 A. Talking about at the time when they was 18 riding behind us like that?</p> <p>19 Q. Right.</p> <p>20 A. I wasn't really paying attention to his 21 hand then, not to be riding with it on the 22 mirror, because I was scared.</p> <p>23 Q. Afterwards you made a statement, didn't</p>

<p style="text-align: right;">Page 49</p> <p>1 you?</p> <p>2 A. Yes.</p> <p>3 Q. And you told the police at that time that</p> <p>4 you had put your -- or that he -- sorry.</p> <p>5 Told the police at that time that you saw</p> <p>6 that he put his arm out the window?</p> <p>7 A. Put his arm out the window?</p> <p>8 Q. Actually what you said was I saw that he</p> <p>9 put his arm out the window.</p> <p>10 A. Probably on his mirror, because he usually</p> <p>11 drive holding his mirror while he drives.</p> <p>12 Q. You didn't tell the police he was holding</p> <p>13 his mirror, though, did you? Let me show</p> <p>14 you Defendant's Exhibit 6. See if you can</p> <p>15 show for me there where you said he had his</p> <p>16 hand on the mirror.</p> <p>17 A. No.</p> <p>18 Q. It doesn't say that, does it?</p> <p>19 A. No.</p> <p>20 Q. Just says he had his arm out the window;</p> <p>21 right?</p> <p>22 A. I'm looking for where it says that at.</p> <p>23 Q. Starting right here.</p>	<p style="text-align: right;">Page 51</p> <p>1 if he was pointing at me.</p> <p>2 Q. Did you ever ask Richard to stop and let</p> <p>3 you out of the car?</p> <p>4 A. No.</p> <p>5 Q. Okay. What happened after that third hit?</p> <p>6 A. He went off the road.</p> <p>7 Q. How did you go off the road? Describe that</p> <p>8 for me.</p> <p>9 A. The car spun around, almost turned over,</p> <p>10 but it didn't.</p> <p>11 Q. Which way did it go off the road?</p> <p>12 A. To the left.</p> <p>13 Q. Did it cross over the center line?</p> <p>14 A. Yes.</p> <p>15 Q. You said it almost turned over. How did it</p> <p>16 almost turn over?</p> <p>17 A. Because it's like they hit the edge of his</p> <p>18 bumper and it spun us around. And the car</p> <p>19 felt like it was fixing to turn over, but</p> <p>20 it didn't once we went off in the grass.</p> <p>21 Q. On the opposite side of the road?</p> <p>22 A. Yeah.</p> <p>23 Q. Let me show you what we marked as</p>
<p style="text-align: right;">Page 50</p> <p>1 A. Uh-huh (positive response).</p> <p>2 Q. That is your statement that you made to the</p> <p>3 police, right, Defendant's Exhibit 6?</p> <p>4 A. Yes.</p> <p>5 Q. Did you have a cell phone that day?</p> <p>6 A. No.</p> <p>7 Q. Did Richard?</p> <p>8 A. No.</p> <p>9 Q. What happened to that gun that was on the</p> <p>10 seat there while all this bumping was going</p> <p>11 on?</p> <p>12 A. What happened to it?</p> <p>13 Q. Uh-huh (positive response). If anything.</p> <p>14 A. Nothing.</p> <p>15 Q. Where was it while all of this bumping was</p> <p>16 going on?</p> <p>17 A. Up on the seat.</p> <p>18 Q. Still right there on the seat?</p> <p>19 A. Yes.</p> <p>20 Q. Wasn't moving around at all?</p> <p>21 A. No.</p> <p>22 Q. Still pointing at you?</p> <p>23 A. I guess. I wasn't really paying attention</p>	<p style="text-align: right;">Page 52</p> <p>1 Defendant's Exhibit 8. Is that where</p> <p>2 the -- where Richard's car wound up?</p> <p>3 A. Yes.</p> <p>4 Q. While it was spinning, what happened inside</p> <p>5 of the car?</p> <p>6 A. Nothing happened. When it stopped, he was</p> <p>7 fixing to get out. That's when they shot</p> <p>8 right there at the ground.</p> <p>9 Q. We're not quite to that point yet. We'll</p> <p>10 get to that in a minute. Did anything fly</p> <p>11 around inside the car? You know, did you</p> <p>12 hit anything inside the car? Did anything</p> <p>13 hit you?</p> <p>14 A. Huh-uh (negative response).</p> <p>15 Q. Nothing happened inside the car while it</p> <p>16 was spinning?</p> <p>17 A. No.</p> <p>18 Q. Did either you or Richard say anything</p> <p>19 while the car was spinning?</p> <p>20 A. No. I was trying to hold on because I</p> <p>21 thought the car was fixing to turn over.</p> <p>22 Q. Did you see when the Lincoln hit your car</p> <p>23 that third time?</p>

	Page 53	Page 55
1	A. Uh-huh (positive response).	1 A. No. I was fixing to, though, until they
2	Q. How did it hit you the third time?	2 shot.
3	A. Just like he put the edge of his bumper	3 Q. Did Richard get out?
4	on -- on the corner of my cousin's bumper.	4 A. He was fixing to.
5	Q. The edge of his front bumper?	5 Q. When they got out of the car -- the two
6	A. Yeah. Like the driver's side, he pushed it	6 officers I'm talking about -- did they say
7	with the passenger's side of my cousin's	7 anything?
8	car.	8 A. They got out and pointed the guns.
9	Q. And you were looking at him when that	9 Q. Did they say anything?
10	happened?	10 A. Not that I recall.
11	A. (Witness nods head).	11 Q. Were you able to see any badges on them at
12	Q. Did Richard's car hit anything between the	12 that point?
13	time that it was hit the third time and the	13 A. Yeah. After they pulled them out of their
14	time that it came to rest?	14 shirts.
15	A. Huh-uh (negative response).	15 Q. When did they pull them out of their
16	Q. Is that a no?	16 shirts?
17	A. No.	17 A. When they jumped out of the car and they
18	Q. Did you suffer any injuries at all in -- or	18 pointed their guns.
19	as a result of the car being forced off the	19 Q. So they jumped out of the car pointing
20	road?	20 their guns, pull their badges out of their
21	A. No.	21 shirts?
22	Q. Was Richard hurt?	22 A. Because they was on a chain.
23	A. No.	23 Q. Around their necks?
	Page 54	Page 56
1	Q. Okay. What happened with the Lincoln after	1 A. (Witness nods head).
2	y'all were spun out?	2 Q. Did they give any commands to get on the
3	A. They pulled up right in like on the side of	3 ground?
4	the car.	4 A. Not when they first -- at first they
5	Q. About like what you see there in	5 didn't.
6	Defendant's 8?	6 Q. So at some point they did?
7	A. About like that. Like they were back a	7 A. They told him to get out of the car.
8	little bit.	8 Q. Told him to get out of the car first?
9	Q. Okay. Is that the Lincoln in Defendant's	9 A. Uh-huh (positive response).
10	Exhibit 8 that we can just barely see there?	10 Q. Did he do that?
11	A. Yes.	11 A. Yes.
12	Q. What happened once everybody came to a rest	12 Q. How far did he get out of the car?
13	or a stop?	13 A. Just standing up in the doorway.
14	A. They got out the car. And when my cousin	14 Q. Where were his hands?
15	was getting out, they shot like right at	15 A. On his side until they told him to put them
16	the door.	16 up.
17	Q. Let's take this kind of slow and walk	17 Q. Until they told him to put his hands up?
18	through this whole thing. They got out of	18 A. Yes.
19	the car; is that right?	19 Q. Did he put his hands up?
20	A. Yes.	20 A. Yes.
21	Q. Did you get out of the car?	21 Q. Where were your hands while all this was
22	A. I was fixing to get out.	22 going on?
23	Q. Did you actually get out?	23 A. In my lap. I was still in the car.

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<p style="text-align: right;">Page 57</p> <p>1 Q. Were you watching what was going on? 2 A. Yeah. 3 Q. Were any of the guns pointed at you? 4 A. When he walked on my side. 5 Q. I'm talking about that point right there in 6 time when Richard is out of the car with 7 his hands up. Is anybody pointing their 8 guns at you? 9 A. He was like standing right in front of me, 10 so it was like they were pointing them at 11 me. 12 Q. So Richard was between you and them; is 13 that right? 14 A. Yes. 15 Q. All right. Richard puts his hands up. 16 What happens next? 17 A. They put the handcuffs on him and started 18 snatching him around. 19 Q. Hang on just a second because we're 20 skipping something here obviously. Because 21 you told me there was a shot fired 22 somewhere in here and there was some 23 commands to get on the ground. So let's go</p>	<p style="text-align: right;">Page 59</p> <p>1 shot. 2 Q. So you were able to see past Richard to 3 where this round hit? 4 A. How the car was it was like my side was up 5 on the hill, so I look at the ground 6 from -- with his door open. 7 Q. Okay. Fair enough. How far from the car 8 did the round hit? 9 A. It was like right by if he would have 10 stepped out. 11 Q. Let's look at Defendant's Exhibit 2. Show 12 for me on Defendant's Exhibit 2 where that 13 round hit. 14 A. Maybe right there somewhere. 15 Q. All right. So you were showing -- Please 16 put your finger back there. I need to 17 describe it for the record. You've got 18 your finger it looks like right in between 19 the front door and the back door; is that 20 right? 21 A. Uh-huh (positive response). 22 Q. And at least the way the picture is kind of 23 at the bottom -- even with the bottom of</p>
<p style="text-align: right;">Page 58</p> <p>1 back. After Richard puts his hands up, 2 what's the next thing that happens? 3 A. They shot before they told me to get out. 4 At the time the car stopped, he opened the 5 door. That's when they shot. 6 Q. He was still in the car? 7 A. Uh-huh (positive response). 8 Q. How much time passed between the time that 9 they told him to get out of the car and 10 there was a shot fired? 11 A. Maybe 30 seconds. 12 Q. Where was the shot fired? 13 A. Like right at the ground with -- if he 14 would have stepped out where his foot would 15 have been like right at the door. 16 Q. Explain to me how you were able to see that 17 if he wasn't out of the car yet. 18 A. Because I can see the dirt jumping off the 19 ground. 20 Q. Was the car door open? 21 A. Yes. 22 Q. But Richard was still in the car? 23 A. Yeah. He was fixing to get out, but they</p>	<p style="text-align: right;">Page 60</p> <p>1 the front door -- 2 A. Uh-huh (positive response). 3 Q. -- where it's open? 4 MR. MASTERS: Is that yes or no? 5 A. Yes. 6 Q. About how far in feet would you say that 7 was from the car? 8 A. Maybe one. 9 Q. Other than the badges and the guns, did you 10 see any other kind of equipment on the two 11 officers? 12 A. I think they had handcuffs. 13 Q. Anything else? 14 A. No. 15 Q. Do you know what a Taser is? 16 A. Yes. 17 Q. You've seen one before? 18 A. Yes. 19 Q. Did they have a Taser? 20 A. No. 21 Q. Do you know what pepper spray is? 22 A. Yes. 23 Q. Did they have pepper spray?</p>

		Page 61	Page 63
1	A. No.		
2	Q. Other than telling Richard to get out of the car, did they say anything else before firing a shot?		
3	A. No.	1	Q. And that's where that gun was, wasn't it?
4	Q. Did they identify themselves as police?	2	A. It was like in the middle of the seat.
5	A. Yeah. After they shot.	3	Q. But it was to his right side; correct?
6	Q. After they shot. How long after they shot?	4	A. Uh-huh (positive response).
7	A. Probably a couple of seconds.	5	Q. Is that a yes?
8	Q. What did they say to identify themselves as police?	6	A. Yes.
9	A. They pulled their badges out of their shirts and said they was the police.	7	Q. Okay. Let's move forward in time. Richard has gotten out of the car. He's got his hands up?
10	Q. Okay. You told me just a minute ago they pulled their badges out of their shirt as they were getting out of the car.	8	A. Uh-huh (positive response).
11	A. I'm saying when they first got out of the car they shot. Then he pulled the badge out of his shirt.	9	Q. Now what happens?
12	Q. Did they tell him to get out of the car before or after they pulled the badges out?	10	A. They put the handcuffs on him.
13	A. After.	11	Q. Was he ordered to get to the ground?
14	Q. How many times did they shoot?	12	A. Yes.
15		13	Q. Did he go to the ground?
16		14	A. Yes.
17		15	Q. By himself?
18		16	A. Halfway by himself until they started grabbing him.
19		17	Q. So he tried to go to the ground before they grabbed him? Is that what you're telling me?
20		18	A. Yeah. He was going to the ground getting
21		19	
22		20	
23		21	
		22	
		23	
		Page 62	Page 64
1	A. One.		1 on his knees and they just forced him on down.
2	Q. Who was it that shot?		2
3	A. I'm not sure which one of them shot.	3	Q. You're saying they. Did both officers come over to the car?
4	Q. When they got out of the car, how far out of the car did they go?	4	A. Yes.
5	A. Like behind the door.	5	Q. Describe for me how that happened.
6	Q. So the one who got out of the passenger's side, where did he go?	6	A. How it happened?
7	A. He was behind his door.	7	Q. Yes, sir.
8	Q. And the driver?	8	A. The passenger came from behind his door and then the driver came from behind his door.
9	A. Behind his door.	9	10 And when they got him on the ground, that's when the passenger's side -- I mean, the officer on the passenger's side came to my side.
10	Q. Where was the gun in your car while all this was going on?	11	11
11	A. On the seat.	12	12
12	Q. Where were Richard's hands?	13	13
13	A. When?	14	14
14	Q. Before he got out of the car.	15	15
15	A. He took his seat belt off.	16	16
16	Q. So he had to reach down to his side to do that; right?	17	17
17	A. Uh-huh (positive response).	18	18
18	Q. Onto his right side?	19	19
19	A. Yeah.	20	20
20		21	21
21		22	22
22		23	23
23			

	Page 65	Page 67
1	they started outside of their doors to	1 A. Uh-huh (positive response).
2	Richard?	2 Q. With his knee on Richard's back?
3	A. Maybe two seconds, because they were right	3 A. Yeah. Because they was right in front of
4	in front of us.	4 the door and he had his knee on his back
5	Q. When they got to Richard, what did they do?	5 and he was looking at me pointing the gun
6	A. The one on the driver's side pushed him on	6 at me telling me not to move.
7	the ground.	7 Q. Once they got him cuffed, what did they do
8	Q. How?	8 next?
9	A. Like from his back. He just pushed him on	9 A. Snatched him up off the ground and started
10	the ground.	10 grabbing on his neck and stuff. And his
11	Q. One hand? Two hands?	11 pants and all that.
12	A. One, because he had a gun in his other	12 Q. Did he just forget about you?
13	hand.	13 A. No. The big one did once they got the
14	Q. Which hand did he use to push him on the	14 handcuffs on him. The other one that was
15	ground with?	15 on the passenger's side walked on my side
16	A. I guess his left.	16 and told me to get out of the car.
17	Q. So the gun was in his right hand; is that	17 Q. How did he go? How did he get to your
18	right?	18 side?
19	A. If I'm not mistaken.	19 A. He walked around the front.
20	Q. What was the other one doing?	20 Q. What did he do once he got to your side?
21	A. Like had his knees on the back of his neck	21 A. Told me to get out of the car.
22	once he got on the ground.	22 Q. Were you paying attention to him at that
23	Q. Before he got on the ground while the	23 point in time?
	Page 66	Page 68
1	driver was pushing him down, what was the	1 A. Which one?
2	one that came from the passenger's side	2 Q. The one who was around on your side of the
3	doing?	3 car now.
4	A. Looking at me telling me don't move.	4 A. Yes.
5	Q. What was he doing with his weapon?	5 Q. And when he told you to get out of the car,
6	A. Pointing it at me.	6 what did you do?
7	Q. So Richard then goes to the ground?	7 A. Get out.
8	A. Uh-huh (positive response).	8 Q. How did you get out?
9	Q. And after he gets to the ground what	9 A. Through the passenger's side.
10	happens?	10 Q. Did you open the door? Did you go out the
11	A. That's when they put the handcuffs on him.	11 window? How did you get out?
12	Q. Who put the handcuffs on him?	12 A. Open the door.
13	A. Chris West.	13 Q. And he let you do that?
14	Q. How did they cuff him? How did Chris cuff	14 A. Uh-huh (positive response).
15	him? Excuse me.	15 Q. Is that a yes?
16	A. With his hands behind his back.	16 A. Yes.
17	Q. What did Chris do with his gun?	17 Q. Once you got out of the car, what happened
18	A. He put it in his holster after he put the	18 next?
19	handcuffs on him. But the other one still	19 A. They put the handcuffs on me.
20	had his out.	20 Q. Who put the handcuffs on you?
21	Q. Where was that pointed?	21 A. The officer on the passenger side.
22	A. At me.	22 Q. Explain for me the handcuffing process for
23	Q. So he's still pointing at you?	23 you. How did he get cuffs on you?

	Page 69	Page 71
1 A.	He just told me to stand on the side of the car and he grabbed one of my arms and put it behind my back and grabbed the other one.	1 and another car pulled up. I know we wasn't in the same car.
2 Q.	Didn't put you on the ground?	2 Q. Back seat of what car?
3 A.	Huh-uh (negative response).	3 A. That Lincoln. I think that's what he was
4 Q.	Is that a no?	4 in. Because after they sat me on the
5 A.	No.	5 ground it was like the car -- the Nova, it
6 Q.	Once he got the handcuffs on you, what	6 was kind of like blocking because they had
7 happened next?	A. He made me sit in the grass.	7 him over there on the ground.
8 A.	He made me sit in the grass.	8 Q. When you say blocking, does that mean you
9 Q.	Where we see you on Defendant's Exhibit 8?	9 couldn't see what was going on?
10 A.	Yes.	10 A. After they sat me in the grass.
11 Q.	Is that right?	11 Q. Did you see anything else happen before --
12 A.	Yes.	12 Let me back up. Another police car came at
13 Q.	So he took you over there?	13 some point?
14 A.	Yes.	14 A. Yes. Because I remember he was in -- when
15 Q.	Were you able to -- What, if anything, were	15 they stopped at the store, he was in
16 you able to see that was going on with	A. Richard while this was happening?	16 another car. He wasn't in the car with me.
17 A.	I just saw the bigger one that was driving	17 Q. What happened between the time that you
18 the car just had his hand around his neck	telling him to shut up and don't move and	18 were sat there on the hill and that other
19		19 police car came?
20		20 A. They was looking through his car.
21		21 Q. Who was looking through his car?
22		22 A. Chris West.
23		
	Page 70	Page 72
1	pulling all on his pants and stuff.	1 Q. Just Chris?
2 Q.	Was Richard resisting him in any way?	2 A. And the other guy was, too, but he wasn't
3 A.	No.	3 looking in it like the other guy was.
4 Q.	Was he telling him he wasn't going to go	4 Q. Did they take anything out of the car?
5 anywhere?	A. No. He just kept asking him why did they	5 A. Their gun.
6 A.	pull him over and knock him off the road.	6 Q. What did they do with the gun?
7 Just told him to shut up.	8 A. I think they sat it on the hood of their	
8 Q.	Was your radio still on at this point?	9 car.
9 A.	No.	10 Q. How soon after you guys came to a rest
10 Q.	What happened with Richard? What did they	11 after being knocked off the road did they
11 do with him?	12 get the gun?	
12 A.	They put him -- I think they put him in	13 A. Probably after they sat me in the grass.
13 another car because I was in the Lincoln.	14 Probably about maybe two, three minutes	
14 Q.	That's a little bit further down the road,	15 later, because time they looked in there
15 though, right, in time?	16 that's when they seen it.	
16 A.	What?	17 Q. When did they first -- When did you first
17 Q.	Because they put you over here sitting on	18 know that they knew that there was a gun in
18 the side of the hill initially; right?	19 the car?	
19 A.	Uh-huh (positive response).	20 A. Because I heard one of the officers said
20 Q.	While you were sitting over here on the	21 something about we pointing our guns at
21 hill, what did they do with Richard?	22 them and he got a gun in here bigger than	
22 A.	I think he was in the back seat of that car	23 ours.
23		Q. First of all, who made that comment?

	Page 73	Page 75
1	A. The guy that was on the passenger side.	1 Q. Is that his ashtray?
2	Q. And when did he make that comment?	2 A. Yes.
3	A. Once they looked in the car.	3 Q. And those bullets were in the ashtray that
4	Q. Was that before or after they cuffed	4 day?
5	Richard?	5 A. I guess. I didn't look in the ashtray.
6	A. After.	6 Q. But you do recognize that as his ashtray;
7	Q. How long after they cuffed Richard?	7 correct?
8	A. Probably about three, four minutes. It	8 A. Yeah. That's the inside of his car.
9	wasn't that long.	9 Q. At any point after Richard got out of the
10	Q. Did they take some pictures that day?	10 car but before he was placed in handcuffs
11	A. They took a picture of me.	11 did he try to get back in the car?
12	(Defendant's Exhibit 13 was marked	12 A. No. Because as soon as he opened the door,
13	for identification.)	13 they shot and he didn't ever move until
14	Q. Let me show you Defendant's Exhibit 13. Is	14 they told him to get out.
15	that the picture they took of you?	15 Q. Did he ever try to reach back into the car?
16	A. Yes.	16 A. No.
17	Q. Did you see them taking these other	17 Q. Other than the gun, did they take anything
18	pictures that we've been talking about	18 else out of the car during the search?
19	today?	19 A. No.
20	A. Not really. I remember they took this	20 Q. Did anybody search you?
21	picture right here. Not this one, but the	21 A. Yes.
22	one where I was sitting in the grass.	22 Q. Who searched you?
23	Q. Defendant's 8?	23 A. Officer on the passenger side.
	Page 74	Page 76
1	A. Uh-huh (positive response).	1 Q. Did they take anything from you?
2	Q. Is that a yes?	2 A. No.
3	A. Yes.	3 Q. Did you see anybody search Richard?
4	Q. Well, everything that we've showed you so	4 A. Yes.
5	far, that is the way it was on that day;	5 Q. Who searched Richard?
6	correct?	6 A. Chris West.
7	A. Yes.	7 Q. Did you see them take anything from
8	Q. They took a picture of Richard too; right?	8 Richard?
9	A. Yes.	9 A. I seen them snatching all on his pants.
10	Q. Let me show you Defendant's 11. Is that	10 That's when they made me sit down in the
11	how he looked that day?	11 grass.
12	A. Yes.	12 Q. Did you see them take anything from him,
13	Q. Let me show you Defendant's 9. What is	13 though?
14	that?	14 A. No.
15	A. Looks like about \$15.	15 Q. How long were you sitting there in the
16	Q. Can you tell where that's at?	16 grass before that police car showed up?
17	A. Looks like under a bed.	17 A. Maybe about 30, 45 minutes.
18	Q. That's not in Richard's car?	18 Q. And you said they put you in what car?
19	A. No. He don't have carpet.	19 A. That Lincoln.
20	Q. Let me show you Defendant's 4. Is that a	20 Q. Did they put you in the car after that
21	picture of the inside of Richard's car that	21 other police car showed up?
22	day?	22 A. After they put him in the car, yes.
23	A. Yes.	23 Q. After they put who in the car?

Page 77	Page 79
1 A. Richard.	1 in his car and was putting gas in it. And
2 Q. And they put him in which car?	2 the police car had a flat and we had to sit
3 A. The police car.	3 there until they fixed the flat.
4 Q. Then they came and got you and put you in	4 Q. How long did that take?
5 the Lincoln; is that right?	5 A. Probably about 30 minutes.
6 A. Yes.	6 Q. Anything else happen there at the gas
7 Q. What happened after y'all got put in the	7 station besides putting gas in Richard's
8 cars?	8 car and fixing the flat?
9 A. The other officer got in Richard's car.	9 A. No. The other officer left in the car
10 Q. Which other officer?	10 after that, after he put the gas in.
11 A. The one that was on the passenger's side.	11 Q. Left in Richard's car?
12 Q. What happened then?	12 A. Yeah.
13 A. We drove up the road about a little less	13 Q. Was the passenger still driving Richard's
14 than a mile. That's when Chris West pulled	14 car?
15 over on the side of the road and picked up	15 A. Yes.
16 something.	16 Q. He left before you did?
17 Q. Did you see what it was he picked up?	17 A. Yes. After he put the gas in, he left and
18 A. No. He put it in a bag.	18 got out and was fixing his tire and Chris
19 Q. Did you ever come to learn what it was that	19 West stayed there until he got through.
20 he picked up?	20 Q. After the tire was fixed, then what
21 A. No. I just know what he said when he got	21 happened?
22 back in the car.	22 A. They took us to the Hayneville jail.
23 Q. What did he say?	23 Q. How long did it take you to get to the
1 A. We got your cousin's ass now.	1 Hayneville jail?
2 Q. Did he say anything else besides that?	2 A. Maybe five minutes. Five, 10 minutes.
3 A. No.	3 Q. Other than the comment that Chris made to
4 Q. Did you know what he meant by that?	4 you when he found whatever it was he found
5 A. No.	5 on the side of the road, did y'all have any
6 Q. How did he know at that point that you were	6 other conversation at any time before you
7 cousins?	7 got to the jail?
8 A. Because they -- he asked me.	8 A. No. He had the radio up.
9 Q. When did he ask you that?	9 Q. Did he talk on that CB radio as you
10 A. While I was sitting on the ground, they	10 described it while y'all were going to the
11 asked me how did I know him.	11 jail?
12 Q. All right. Once Chris gets back in the	12 A. No.
13 car, what happens after that?	13 Q. How long does it take to get from that
14 A. They go on down the road to the store.	14 store to the jail?
15 Q. What store did they go to?	15 A. Maybe five, 10 minutes.
16 A. Howard, Howard Hooks.	16 Q. What happened once you got to the jail?
17 Q. Where is that at?	17 A. They started dressing my cousin out. Well,
18 A. Probably about a mile from where we was at.	18 made him change clothes.
19 Q. Towards Hayneville? Towards Wilcox County?	19 Q. What happened with you once you got to the
20 A. Towards Hayneville.	20 jail?
21 Q. And what happened when you got to the	21 A. Nothing.
22 store?	22 Q. Nothing?
23 A. The police car pulled up and they pulled up	23 A. No.

Deposition of Kelvin Carmichael

November 14, 2007

	Page 81	Page 83
1	Q. Okay. You arrive in the Lincoln. You're 2 still in handcuffs; right?	1 Q. Was he wearing a uniform? 2 A. Yes.
3	A. Yes.	3 Q. Was it a jail uniform?
4	Q. Car stops?	4 A. It was like he worked there.
5	A. Yes.	5 Q. What about the girl as you described her, 6 was she somebody who worked there too?
6	Q. What happens after the car stops?	7 A. Yes.
7	A. They just take me on the inside where they 8 book you at, where they put you in there 9 at.	8 Q. Do you know who she was?
10	Q. Were you booked?	9 A. No.
11	A. No.	10 Q. Haven't seen them since?
12	Q. What did they do with you?	11 A. No.
13	A. He just took me in a room and started 14 asking me questions. Then he told me to 15 call me a ride because I ain't who they 16 want.	12 Q. Who took you back into that room that you 13 were telling me about?
17	Q. How long were you in the booking area 18 before being taken to that room?	14 A. Chris West.
19	A. Maybe 30, 45 minutes.	15 Q. And how long were you back there with him?
20	Q. Were you able to see Richard get booked?	16 A. Maybe 20 minutes.
21	A. Yes.	17 Q. What did y'all talk about?
22	Q. What happened with Richard's booking?	18 A. He just was asking me questions. Then 19 another guy came in.
23	A. They took him in the back and made him	20 Q. Who was the other guy?
		21 A. I don't know. He had on like a suit.
		22 Q. White guy or black guy?
		23 A. Black guy.
1	change clothes back there with Chris West. 2 And when they came back to the front, they 3 put his stuff on the counter and they got 4 into it about that wasn't the money that he 5 had.	1 Q. Did he have a badge?
6	Q. Who is they that got into it?	2 A. Yes.
7	A. He told Chris West that that wasn't the 8 money that he had in his pocket, that some 9 of it was missing.	3 Q. And a gun?
10	Q. What did Chris say?	4 A. Yes.
11	A. Told him to shut up and told the people to 12 put him in a -- like a little cell right 13 beside.	5 Q. Did he ask you questions?
14	Q. Did they do that?	6 A. Yes.
15	A. Yes.	7 Q. Did you make this statement that's 8 Defendant's Exhibit 6 while you were back 9 there in that room?
16	Q. How many people besides you, Chris West, 17 and Richard were there in the booking area?	10 A. I think that's the paper. I know they had 11 me write something.
18	A. It was a lady at the desk and another guy.	12 Q. I'll let you look at it again and you tell 13 me if that's what you did that day.
19	Q. Was the deputy who transported Richard, was he there?	14 A. Yes.
21	A. Not that I remember.	15 Q. Anybody else besides Chris and the guy in 16 the suit come back there and talk to you?
22	Q. Who was the other guy?	17 A. No.
23	A. Someone up behind the desk with the girl.	18 Q. And what happened after you made the 19 statement?
		20 A. He told me he would call me a ride.
		21 Q. And did you do that?
		22 A. Yes.
		23 Q. Who did you call?

	Page 85	Page 87
1	A. My aunt. But --	1 Q. When you see him every now and then, do
2	Q. Which aunt?	2 y'all do the same things you used to do?
3	A. Shirley Marshall. But she wasn't there, so	3 A. Like when he come up here, we'll probably
4	they told one of the police guys to take me	4 go to the mall or something. But that's
5	home.	5 been probably a year ago.
6	Q. After you were taken back to that room	6 Q. That's just because y'all are separated by
7	where you made the statement, did you see	7 distance now; right?
8	Richard again that day?	8 A. Yes.
9	A. No.	9 Q. Have you noticed any changes in his
10	Q. Were there ever any charges pressed against	10 behavior?
11	you?	11 A. No.
12	A. No.	12 MR. WILFORD: I think that's all I
13	Q. Other than you and Richard, do you know of	13 have.
14	anybody else who claims that they witnessed	14 MR. LEWIS: That's it.
15	the chase?	15 (Deposition was concluded at
16	A. No.	16 approximately 3:25 p.m.)
17	Q. Do you know of anybody who claims to have	17 * * * * *
18	witnessed them ramming you off the road?	18 FURTHER DEPONENT SAITH NOT
19	A. No.	19 * * * * *
20	Q. Do you know of anybody who claims to have	20
21	gone by and saw y'all on the side of the	21
22	road?	22
23	A. I seen cars stopping, but I ain't know who	23
	Page 86	Page 88
1	they was.	1 REPORTER'S CERTIFICATE
2	Q. You didn't recognize anybody?	2 STATE OF ALABAMA:
3	A. No.	3 MONTGOMERY COUNTY:
4	Q. Do you know what happened to that gun?	4 I, Lyn Daugherty, Certified Shorthand
5	A. No.	5 Reporter and Commissioner for the State of Alabama
6	MR. WILFORD: Let's take a break.	6 at Large, do hereby certify that I reported the
7	(Brief recess was taken.)	7 deposition of:
8	Q. Mr. Carmichael, what kind of stuff did you	8 KELVIN CARMICHAEL
9	and your cousin Richard do before this	9 who was duly sworn by me to speak the truth, the
10	incident?	10 whole truth and nothing but the truth, in the
11	A. At his house?	11 matter of:
12	Q. Just in general. What kind of stuff did	12 RICHARD MARSHALL,
13	y'all do?	13 Plaintiff,
14	A. Just sit around, watch TV, and used to go	14 vs.
15	to the casino.	15 CHRIS WEST, in his individual
16	Q. Which casino?	16 capacity, LASHUN HUTSON, in his
17	A. In White Hall.	17 individual capacity,
18	Q. Anything else?	18 Defendants.
19	A. Just around my cousin's house.	19 IN THE UNITED STATES DISTRICT COURT
20	Q. Do y'all still do those same things now?	20 FOR THE MIDDLE DISTRICT OF ALABAMA
21	A. I'm back up in Montgomery.	21 NORTHERN DIVISION
22	Q. You don't hang around with him anymore?	22 Civil Action No. 2:06-cv-701-ID.CSC
23	A. I see him every now and then.	23 on Wednesday, November 14, 2007.

Deposition of Kelvin Carmichael

November 14, 2007

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1 The foregoing 87 computer-printed pages
2 contain a true and correct transcript of the
3 examination of said witness by counsel for the
4 parties set out herein. The reading and signing is
5 hereby waived.

6 I further certify that I am neither of kin
7 nor of counsel to the parties to said cause nor in
8 any manner interested in the results thereof.

9 This 13th day of December 2007.

10
11
12 _____
13 Lyn Daugherty, ACCR #66
14 Expiration Date: 9-30-2008
15 Certified Court Reporter
16 And Commissioner for the
17 State of Alabama at Large
18
19
20
21
22
23

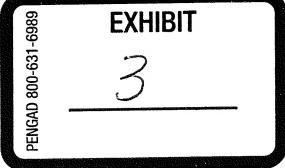
DEPOSITION OF CHRISTOPHER WEST

January 21, 2008

Pages 1 through 64

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Deposition of Christopher West

Marshall vs. West; Hutson

January 21, 2008

Page 1	Page 3
<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE MIDDLE DISTRICT OF ALABAMA 3 NORTHERN DIVISION 4 5 RICHARD MARSHALL, 6 Plaintiff, 7 vs. CIVIL ACTION NO. 8 2:06-cv-701-ID.CSC 9 10 CHRIS WEST, in his individual 11 capacity, LASHUN HUTSON, in his 12 individual capacity, 13 14 Defendants. 15 16 ***** 17 18 DEPOSITION OF CHRISTOPHER WEST, taken 19 pursuant to stipulation and agreement before Tracye 20 Sadler Blackwell, Certified Court Reporter and 21 Commissioner for the State of Alabama at Large, in 22 the Law Offices of Webb & Eley, 7475 Halcyon Pointe 23 Drive, Montgomery, Alabama, on January 21, 2008, 24 commencing at approximately 9:10 a.m. 25 26 *****</p>	<p>1 EXAMINATION INDEX 2 BY MR. LEWIS 5 3 4 PLAINTIFF'S EXHIBITS 5 6 1 Evidence Submission/Analysis Forms 42 7 2 Courtesy Warning 46 8 3 Deposition 47 9 4 Complaint and Warrant 51 10 5 Alabama Uniform Incident/Offense Report 52 11 6 6-28-05 Statement Form of Christopher 55 12 West 13 14 ***** 15 STIPULATIONS 16 It is hereby stipulated and agreed by and 17 between counsel representing the parties that the 18 deposition of CHRISTOPHER WEST is taken pursuant to 19 the Federal Rules of Civil Procedure and that said 20 deposition may be taken before Tracye Sadler 21 Blackwell, Certified Court Reporter and 22 Commissioner for the State of Alabama at Large, 23 without the formality of a commission, that</p>
Page 2	Page 4
<p>1 APPEARANCES 2 3 ON BEHALF OF THE PLAINTIFF: 4 Mr. Jay Lewis 5 Law Offices of Jay Lewis 6 Attorney at Law 7 847 South McDonough Street 8 Montgomery, Alabama 9 10 ON BEHALF OF THE DEFENDANTS: 11 Mr. Daryl L. Masters 12 WEBB & ELEY, P.C. 13 Attorneys at Law 14 7475 Halcyon Pointe Drive 15 Montgomery, AL 36117 16 Mr. Rick A. Howard 17 NIX, HOLTSFORD, GILLILAND, HIGGINS & HITSON 18 Attorneys at Law 19 Suite 300 20 4001 Carmichael Road 21 Montgomery, AL 36106 22 23 ALSO PRESENT: 24 25 Mr. Lashun Hutson 26 27 *****</p>	<p>1 objections to questions other than objections as to 2 the form of the question need not be made at this 3 time but may be reserved for a ruling at such time 4 as the said deposition may be offered in evidence 5 or used for any other purpose by either party 6 provided for by the Statute. 7 It is further stipulated and agreed by and 8 between counsel representing the parties in this 9 case that the filing of said deposition is hereby 10 waived and may be introduced at the trial of this 11 case or used in any other manner by either party 12 hereto provided for by the Statute regardless of 13 the waiving of the filing of the same. 14 It is further stipulated and agreed by and 15 between the parties hereto and the witness that the 16 signature of the witness to this deposition is 17 hereby waived. 18 19 20 ***** 21 22 23</p>

	Page 5	Page 7
1 THE COURT REPORTER: Usual 2 stipulations? 3 MR. MASTERS: Yes. 4 MR. LEWIS: Yes. 5 6 CHRISTOPHER WEST 7 The witness, after having first been duly sworn 8 to speak the truth, the whole truth, and nothing 9 but the truth, testified as follows: 10 EXAMINATION 11 BY MR. LEWIS: 12 Q. Tell us your name, please. 13 A. Christopher Stewart West. 14 Q. And how are you employed, Mr. West? 15 A. By the Lowndes County Sheriff's Department. 16 Q. And how long have you been employed by the 17 Lowndes County Sheriff's Department? 18 A. About 11, 12 years, I think. 19 Q. And what's your position with Lowndes 20 County Sheriff's Department? 21 A. I'm a deputy sheriff. 22 Q. Do you hold any particular rank as a deputy 23 sheriff?		1 Community Affairs through a grant. There 2 are several law enforcement agencies, 3 including district attorney's office, 4 within our three-county circuit. 5 Each year an agency -- all the agencies 6 are allowed to place an agent or an officer 7 on the drug task force. Some agencies 8 choose to participate. Most don't because 9 of funding issues. Currently there's the 10 Lowndes County Sheriff's Office, the 11 Hayneville Police Department, and the 12 district attorney's office that are 13 participating on the drug task force as 14 part of the grant. 15 Q. Okay. So those three agencies make up the 16 drug task force? 17 A. Yes, sir. 18 Q. Are there federal agents assigned to that? 19 A. No, sir. 20 Q. But your salary continues to come from the 21 Lowndes County Sheriff's Office? 22 A. That's correct. 23 Q. And the Lowndes County Sheriff's Office in
	Page 6	Page 8
1 A. I'm a lieutenant. 2 Q. How many people are employed in the Lowndes 3 County Sheriff's Office? And by that I 4 mean people who are in law enforcement as 5 opposed to jail work. 6 A. Between 10 and 12 deputies, I think. 7 Q. And what is your particular job as 8 lieutenant? Do you have any particular 9 responsibility in that position? 10 A. Yes, sir. I'm drug task force commander. 11 Q. And help me understand the drug task force 12 because there's always some confusion about 13 whether it's a legal entity, whether it has 14 its own personnel practices, whether it has 15 its own policies. Tell me, if you will, 16 what the 2nd Judicial Drug Task Force is. 17 MR. MASTERS: Object to the form. 18 Go ahead and answer as best as 19 you can, Chris. 20 A. The drug task force is a task force that's 21 made up of several agencies. We're funded 22 by the Department of Justice through the 23 Alabama Department of Economic and	1 turn receives a grant to cover your 2 activity with the drug task force? 3 A. The Lowndes County Commission does, not the 4 sheriff's office. 5 Q. Does the Lowndes County -- does the drug 6 task force have a separate policies and 7 procedures manual for you to follow? 8 A. Yes, sir, we do. 9 Q. And are the policies and procedures in that 10 promulgated by the Department of Justice or 11 by some individual agency or the task force 12 as a group? 13 A. A board of directors that form up the drug 14 task force. We have a board of directors 15 that meet periodically, and if new rules or 16 guidelines need to be established, then the 17 board members will collectively make a 18 decision on how to establish that. 19 Q. Okay. And do those guidelines include 20 tactical operations, the way you perform 21 your duties, the day-to-day activities in 22 which you're involved? 23 A. Yes, sir.	

Deposition of Christopher West

Marshall vs. West; Hutson

January 21, 2008

	Page 9	Page 11
1 Q. Does the Lowndes County Sheriff's Office 2 have its own set of rules and regulations 3 for you to go by?		
4 A. Yes.	1 A. Yes, sir.	
5 Q. And who puts those out?	2 Q. Tell me about those.	
6 A. The sheriff.	3 A. It's just a --	
7 Q. Have you discovered any conflicts between 8 the sheriff's guidelines and policies and 9 those of the drug task force?	4 Q. And I don't want the two-day seminars and 5 stuff like that.	
10 A. No, sir.	6 A. Yeah. There's just numerous ...	
11 Q. So they're pretty much consistent?	7 Q. Okay. Have you been to the FBI Academy?	
12 A. Yes, sir.	8 A. Yes, sir.	
13 Q. Let me get a little personal information on 14 you. What's your address?	9 Q. How long a course was that?	
15 A. Physical or mailing?	10 A. Ten weeks.	
16 Q. Physical.	11 MR. HOWARD: Can we take a second?	
17 A. 235 -- no. 214 Norman Drive, Fort Deposit.	12 MR. LEWIS: Sure.	
18 Q. Okay. 214 Norman Drive?	13 (A brief recess was taken.)	
19 A. Yes.	14 Q. (Mr. Lewis continuing:) Have you had any 15 other training courses that have been six 16 weeks or longer?	
20 Q. And what's your educational background?	17 A. No, sir, I don't believe so.	
21 A. I graduated high school, currently in 22 college.	18 Q. Have you been to any law enforcement 19 advanced driving academies?	
23 Q. And where are you in college?	20 A. No, sir.	
	21 Q. Let me call your attention to June 28th, 22 2005. And I'll represent to you that's the date that everybody agrees that the	
	Page 10	Page 12
1 A. Herzing in Birmingham.	1 incident with Mr. Marshall about which	
2 Q. Where?	2 we're here today occurred. What had you	
3 A. Herzing. Herzing College in Birmingham.	3 been doing that entire day?	
4 Q. Herzing?	4 A. At my office. Got up out of bed that	
5 A. Yes, sir.	5 morning and went to work.	
6 Q. What sort of school is that?	6 Q. Okay. What projects were you working on	
7 A. It's a private school.	7 that day?	
8 Q. And you're looking for a four-year degree 9 from there?	8 A. I don't remember.	
10 A. Yes, sir.	9 Q. Okay. Do you remember when you left your	
11 Q. What year are you at Herzing?	10 office?	
12 A. My final year.	11 A. No, sir, not exactly.	
13 Q. And what's your major?	12 Q. Okay. At some point that day did you hook	
14 A. Homeland security and public safety.	13 up with Mr. Hutson?	
15 Q. When did you graduate from high school?	14 A. Yes, sir.	
16 A. In '86.	15 Q. At what point did you do that?	
17 Q. Have you had any additional training since 18 1986 other than what you're getting at 19 Herzing College?	16 A. I don't really remember. He may have -- we	
20 A. In regards to ...	17 may have been in the office together that	
21 Q. Your position, your job --	18 morning and discussed Mr. Marshall, or I	
22 A. Yes, sir.	19 may have picked him up at another	
23 Q. -- criminal justice, that sort of thing.	20 location. I just don't remember.	
	21 Q. When you say you might have picked him up,	
	22 do you recall who was driving?	
	23 A. I was driving.	

Page 13	Page 15
1 Q. Do you recall what you were driving? 2 A. Yes, sir. 3 Q. What were you driving? 4 A. A Lincoln. 5 Q. What model? 6 A. Town Car. 7 Q. What year? Do you remember? 8 A. No, sir, I don't remember. 9 Q. And why were you driving a Lincoln Town 10 Car? 11 A. I don't remember exactly why we were 12 driving the Lincoln that day. 13 Q. Was that Lincoln a vehicle that had been 14 confiscated? 15 A. Yes, sir. 16 Q. And had there been a condemnation 17 proceeding as to that Lincoln? 18 A. Yes, sir. 19 Q. And it had been condemned and your office 20 had it? 21 A. Yes, sir. 22 Q. Why were you discussing Mr. Marshall that 23 day?	1 And it wasn't -- I don't know if you really 2 could consider it a dirt road. It's more 3 like a -- more like a big driveway that 4 kind of went up a hill and then it took a 5 right right in front of the mobile home 6 where he was living at at the time. And as 7 it went on past his house, I guess maybe 8 less than a hundred yards or so it kind of 9 turned into a little more narrow trail so 10 to speak. So I don't even know if it's 11 considered -- if it has a name. It could 12 be a private drive. 13 Q. All right. Did you know Mr. Marshall prior 14 to this time? 15 A. No, sir. 16 Q. Had you had any law enforcement contact 17 with Mr. Marshall prior to this time? 18 A. Never met him. Never seen him before. 19 Q. Had you received any prior information 20 about Mr. Marshall prior to that time? 21 A. Yes, sir. 22 Q. And what information had you received? 23 A. The same information in reference to drug
Page 14	Page 16
1 A. I had received information that 2 Mr. Marshall was selling dope at his 3 residence, selling illegal drugs at his 4 residence. 5 Q. Where did you get that information? 6 A. I don't remember. 7 Q. Did you make any notes of where you got 8 that information from? 9 A. I may have. 10 Q. Would you have preserved those notes? 11 A. No, sir. 12 Q. Did your information indicate what sort of 13 drugs he was supposed to be selling? 14 A. Crack cocaine and marijuana. 15 Q. And based on that information what, if 16 anything, did you do? 17 A. We drove out to Mr. Marshall's residence to 18 do a knock-and-talk and to just discuss 19 with him the information that we had 20 received. 21 Q. And where was Mr. Marshall's residence? 22 A. Just off Highway 21 on a little dirt road. 23 I don't recall the name of the dirt road.	1 activity. 2 Q. When you got to his house, what, if 3 anything, did you do? 4 A. I believe that we knocked on the door and 5 no one came to the door. We got back in 6 our vehicles and -- or got back in our 7 vehicle and left the residence. Agent 8 Hutson had some information about another 9 place that was, I think -- I think it's 10 referred to as the Casey community. It's 11 kind of in that area. It's not in the 12 exact same area, but it's in that part of 13 the county. And when we were leaving 14 Mr. Marshall's residence, we were going to 15 go to this home down in the Casey 16 community. 17 Q. And what information did you have about the 18 Casey community that led you to go down 19 there? 20 A. Agent Hutson had that. I'm not exactly -- 21 I'm not exactly sure. 22 Q. So you were looking for Mr. Marshall? 23 A. Yes, sir.

Deposition of Christopher West

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Page 17	Page 19
<p>1 Q. Did you know what kind of car Mr. Marshall 2 was likely to be driving? 3 A. Yes, sir. 4 Q. And what were you on the lookout for? 5 A. A blue Chevy Nova, older -- older -- older 6 type vehicle. 7 Q. And just so I'm clear, you did not -- you 8 do not recall today how you received the 9 information about Mr. Marshall allegedly 10 selling drugs? 11 A. No, sir. It could have been someone we 12 interviewed and I just made a note on 13 some -- a small Post-it, or it could have 14 been a phone call. I know we received it 15 on more than one occasion. 16 Q. And when you received that information, do 17 you have a present sense of whether or not 18 you believed that information to be 19 reliable? 20 A. If -- if it was a source that was a 21 reliable source and the time frame allowed, 22 I would have obtained a search warrant for 23 his residence. But we're doing a</p>	<p>1 direction we were coming from, you have to 2 go down County Road 7. Because we were on 3 21. I mean, he -- where he lives is just 4 off 21. 5 Q. Right. 6 A. So if you're coming back toward Hayneville 7 from Mr. Marshall's residence, you take a 8 left on County Road 7. 9 Q. And prior to your encountering Mr. Marshall 10 had you taken that left? 11 A. Yes, sir. 12 Q. So you were on County Road 7 at that time? 13 A. That's right. 14 Q. What, if anything, happened then? 15 A. We met Mr. Marshall's vehicle, and I -- I 16 said, well, that's his vehicle right 17 there. We turned around and got behind his 18 vehicle. 19 Q. Okay. And what then? 20 A. Mr. Marshall didn't have on a seatbelt. I 21 observed that he didn't have on a 22 seatbelt. And we've got a blue-and-white 23 warning light that is powered -- it's a</p>
<p>1 knock-and-talk, so maybe -- it could have 2 been a reliable informant that just knew 3 that activity was going on and just 4 referred it to me and we went out to do the 5 knock-and-talk. If it was reliable, we 6 would obtain -- I mean, if it was reliable 7 and within the time frame allowed, we would 8 have gotten a search warrant. 9 Q. Okay. So the fact that you didn't get a 10 search warrant would seem to indicate that 11 it was not the sort of information that you 12 would have taken to a judge at that time; 13 correct? 14 A. That's correct. Not at that time. 15 Q. All right. So you're on your way to the 16 Casey community. How do you get to the 17 Casey community from where Mr. Marshall's 18 residence is? 19 A. You know, I'm not exactly sure because I 20 don't think I've ever been there before. 21 But, now, Agent Hutson is familiar with it. 22 Q. Okay. 23 A. But I know it's -- you got to -- in the</p>	<p>1 12-volt power that you plug into the 2 cigarette lighter. And I placed it on the 3 dash of the vehicle and activated that 4 light behind his vehicle. 5 Q. What did Mr. Marshall do in response to 6 that? 7 A. Kept driving. 8 Q. How fast were you going at the time you 9 first activated this light? 10 A. I don't -- I don't recall. 11 Q. Well, would you consider it an excessive 12 rate of -- without regard to miles per 13 hour, an excessive rate of speed, an 14 ordinary rate of speed, a slow rate of 15 speed? 16 A. An ordinary rate. It wasn't exceeding the 17 speed limit. 18 Q. And your position is that Mr. Marshall -- 19 that you activated this light? 20 A. That's correct. 21 Q. And the light was working at the time? 22 A. Yes, sir. 23 Q. And there were blue-and-white strobes or</p>

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1 flashes coming off the light?	1 Q. At some point you're -- setting the scene
2 A. That's correct.	2 here, you have turned onto Highway 7. You
3 Q. All right. So Mr. Marshall kept on	3 meet him. He's coming toward you?
4 driving?	4 A. That's correct.
5 A. That's right.	5 Q. You turn around and you're going back,
6 Q. What did you do then?	6 what, south on Highway 7 approximately?
7 A. Blew the horn, flashed the headlights, and	7 A. Yeah.
8 even at one point pulled alongside his	8 Q. Back toward Highway 21?
9 vehicle.	9 A. That's correct.
10 Q. What color was this Lincoln Town Car you	10 Q. And when I say Highway 7, I mean County
11 were in?	11 Road 7.
12 A. It's kind of a bluish/aquamarine type	12 A. That's right.
13 color.	13 Q. Heading back toward Highway 21?
14 Q. Doesn't look much like a police car though?	14 A. Uh-huh (positive response).
15 A. No. _____	15 Q. What, if anything, happened when you hit
16 Q. So you blew the horn, and Mr. Marshall just	16 Highway 21?
17 continued to keep driving; right?	17 A. He speeds up a little bit. It's a little
18 A. Yes, sir.	18 wider highway than the county road.
19 Q. You say you pulled up alongside him. Tell	19 Q. Did he turn onto Highway 21?
20 me about that.	20 A. Yes, he did.
21 A. We pulled alongside the vehicle. And, like	21 Q. Which direction did he turn?
22 I said, it -- he's got an older car. It	22 A. Going toward his residence, away from
23 doesn't run that fast. Pulled alongside	23 Hayneville toward Wilcox County.
Page 22	Page 24
1 the vehicle. Our windows are down. I	1 And less than maybe 50 to 75 yards he
2 think Agent Hutson holds up his badge. And	2 throws something out the window that
3 it's a pretty good -- it's a pretty good	3 actually hits us in the windshield, a
4 size badge. It's round and it has a	4 plastic baggy. I seen enough of those in
5 leather cover around it. It's a gold badge	5 my years. I know what a plastic baggy
6 with a black background. And he holds it	6 looks like. It hits us and just kind of
7 up. I mean, we're probably as close from	7 flies off to the side. So I'm making
8 me to you. And he holds up the badge and	8 mental notes to try to remember where this
9 says pull over. And Mr. Marshall is	9 evidence or whatever came out of the
10 yelling and cussing, and he's very -- has a	10 window.
11 very defensive appearance about himself.	11 And he continues to go in the direction
12 And so Agent Hutson is holding up the	12 of Wilcox County. So we pull up beside him
13 badge. And then at one point we even	13 again, you know, hey, pull over. We got
14 removed the light from the dash and we've	14 the badge just like this right here and the
15 got the badge in one hand and the light in	15 light, you know, pull over. And he's just
16 the other saying pull over. And he's	16 yelling and cussing, you know, fuck you
17 looking, I mean, directly at us. And he	17 all, I'm not doing it, I'm not pulling
18 says, you know, fuck y'all or something to	18 over, you know.
19 that nature, you know, I'm not pulling	19 And so we back off. And I tell Shun, I
20 over, you know. And so he keeps on going.	20 says, hold on. Because he's moving around
21 And so we pull -- you know, we back off and	21 in his seat. There's -- you know, he's
22 pull back in behind the vehicle just	22 like looking down. He's -- there's a lot
23 following behind him.	23 of movement going on in the seat with him.

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<p>1 And I tell Shun, I says, you know, you hold 2 on because something is going on here. 3 And so I bump his vehicle a couple of 4 times thinking that that will, you know, 5 make him pull over, but he still -- you 6 know, he's yelling and he's -- and he sees 7 us. I mean, he's looking in the mirror. 8 He sees us back -- he sees the blue light. 9 And so he ducked, and then I just kind 10 of, you know, pushed his bumper a little 11 bit. And his vehicle swerves and comes up 12 on this side of the road. Never harm 13 anything. I don't even think it hurt the 14 grass. And he came to rest in the 15 vehicle. The vehicle came to rest up on 16 the embankment. And I believe I backed up 17 because I took a position -- a defensive 18 position -- his vehicle -- if my wrist is 19 the front of his vehicle, then the nose of 20 my vehicle took a position like -- at an 21 angle like this. 22 And we opened our doors with our 23 weapons drawn behind our -- behind the</p>	<p>1 Q. I understand -- 2 MR. MASTERS: Object to the form 3 of the previous question. 4 Just listen to his questions 5 and answer his questions. 6 THE WITNESS: Okay. I'm sorry. 7 Q. The question -- the cars would have been 8 approximately four to five feet apart? 9 A. Yes, sir. 10 Q. And when you say you pulled alongside him, 11 I'm assuming that you mean that your car's 12 passenger's side was next to his car's 13 driver's side? 14 A. Yes, sir. 15 Q. And to clarify what you said about how you 16 stopped -- 17 MR. MASTERS: Excuse me. Object 18 to the form of the previous 19 question. 20 Did you hear the 21 question, Chris? Which side 22 was closest to which? 23 THE WITNESS: Shun's side was</p>
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<p>1 doors. And I said to him -- I said, get 2 out of your vehicle and get on the ground. 3 And he just sat there cussing and just 4 sweating, and his eyes were red. It was a 5 bad situation. 6 Q. Let's go back just a little bit. Earlier 7 you had said that when you pulled up next 8 to him you were as close as you were to 9 me -- 10 A. Yeah. 11 Q. -- right now. And I estimate that distance 12 to be about four to five feet. Would that 13 be accurate? 14 A. Or maybe further. Something like that. I 15 mean, I could see his face and I'm 16 driving. And Shun is even closer than I 17 am. But I'm driving. There's nothing else 18 on the road. And I'm looking him in his 19 face and he's looking at us. And he sees 20 the light and the badge is just like this. 21 And, like I say, it's a gold badge with a 22 black background and a blue-and-white 23 strobe just flashing.</p>	<p>1 closest to his driver's side. 2 MR. MASTERS: So your car's 3 passenger's side was close to 4 his car's driver's side? 5 THE WITNESS: That's right. 6 MR. MASTERS: I think you said the 7 opposite, Jay. I may be 8 mistaken. 9 MR. LEWIS: Well, I'll -- we'll go 10 with the fact that his car -- 11 that Mr. West's car's 12 passenger's side was next to 13 Mr. Marshall's driver's side. 14 MR. MASTERS: I may be mistaken, 15 but I thought you said the 16 opposite. 17 MR. LEWIS: That's fine. 18 Q. But to clarify, you didn't pull over to the 19 right to get up next to his car. You 20 pulled to the left? 21 A. Yeah. I pulled as if I was passing his 22 car. 23 Q. Right. Okay. And this is a two-lane</p>

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1	highway?		
2	A. Yes, sir.	1	Q. And what, if anything, was Mr. Marshall saying to you at the time?
3	Q. Are you familiar with what a PIT is?	2	A. Cursing.
4	A. Yes, sir.	3	Q. Okay. Have any recollection of the specific language he was using?
5	Q. What is a PIT?	4	A. Fuck y'all, why y'all fucking with me, things of that nature.
6	A. It's a -- what's referred to as PIT maneuver.	5	Q. Going back to when you say he threw a baggy out of the car and hit your car. In what way did he -- I mean, tell me what you saw as that baggy came out of the car.
7		6	A. I saw his arm go up and the bag come out.
8	Q. And that's a precision intervention	7	Like I said, we could see him moving around in the car.
9	technique or precision interdiction	8	Q. And you made note of where that baggy had gone off the road?
10	technique?	9	A. Yes, sir.
11	A. Yes, sir.	10	Q. You've got him in the car. Did he have a passenger with him?
12	Q. And is that what you performed on	11	A. Yes, sir.
13	Mr. Marshall's car?	12	Q. And what did the passenger do, if anything?
14	A. Yes, sir.	13	A. Nothing really.
15	Q. And to clarify -- correct me if I'm wrong -- that's a procedure by which you pull up next to the car with your front fender next to his rear fender and then slow down and simultaneously turn into his car bumping it into a turn; correct?		
16			
17			
18			
19			
20			
21	A. Something of that nature.		
22	Q. And that's pretty much what you did on that occasion?		
23			
		Page 30	Page 32
1	A. Yes, sir.	1	Q. Just sat there?
2	Q. And his car came to rest off the road; correct?	2	A. Yes, sir.
3	A. Yes, sir.	3	Q. Did you hear the passenger cursing?
4	Q. Based on what you said.	4	A. No, sir.
5	And did it come to rest facing back in the direction from what you had come?	5	Q. And Mr. Marshall's window, was it up or down?
6		6	A. Down.
7		7	Q. What's the next thing that happened?
8	A. Yes, sir.	8	I know I sound like a prosecutor, but what happened then?
9	Q. So instead of going toward Wilcox County, it is now headed away from Wilcox County in the grass?	9	A. Mr. Marshall -- he got out of his car. He was standing -- he had the door open and was standing between the car and the door.
10		10	And he's yelling and cussing. And I tell him several times to get on the ground. He will not comply. And several more times I say get on the ground, get on the ground now. He won't comply. And I fired my weapon in the ground, I guess, some seven -- six to eight feet out from him into the ground.
11	A. That's correct.	11	
12	Q. On the opposite side of the road?	12	
13	A. Yes, sir.	13	
14	Q. You then backed up and angled your car toward his car just off the road?	14	
15	A. That's correct.	15	
16	Q. Okay. I think we've got the scene set.	16	
17	And you indicated that you jumped out of the car and Mr. Hutson jumped out of the car, weapons drawn, and yelled at Mr. Marshall to get out of the car?	17	
18	A. That's correct.	18	At that point he was shocked that that even happened. I could see the appearance
19		19	
20		20	
21		21	
22		22	
23		23	

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<p>1 on his face. That's when I left from 2 behind my door, my weapon still pointed at 3 him -- or my weapon pointed at him, and as 4 I approached him, I grabbed him. I don't 5 remember where I grabbed him, but I know I 6 grabbed him and I put him on the ground. 7 And he -- he was very resistant.</p> <p>8 But he was cussing and just combative. 9 Not very combative, but just not wanting to 10 comply at all. But I was able to get my 11 handcuffs out and put the handcuffs on 12 him. And I think Agent Hutson got the 13 passenger out and placed the handcuffs on 14 him.</p> <p>15 I left him there on the ground after I 16 got him handcuffed and looked into the 17 vehicle. On the driver's seat right there 18 in the middle was a .357 Magnum. And in 19 the ashtray was .357 rounds. There was 20 some rounds in the floorboard and might 21 have been some loose rounds in the seat. 22 But I know the gun was loaded. And there 23 was a -- like a liquor flask there in the</p>	<p>1 unit. The marked unit comes out and 2 transports them. I take some photos. And 3 that's pretty much the gist of it.</p> <p>4 Q. Going back to when you had him on the 5 ground and were doing the search of the 6 vehicle. Did you also do a search of him, 7 did you say?</p> <p>8 A. I patted him, patted his pockets to see if 9 he had any weapons or anything in his 10 pockets.</p> <p>11 Q. Did you remove a wallet?</p> <p>12 A. I may have. I don't remember.</p> <p>13 Q. Did you remove any money from him?</p> <p>14 A. I may have.</p> <p>15 Q. If you removed any money from him, did you 16 turn in all of the money you removed from 17 him?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Turned it in to whom?</p> <p>20 A. The jail.</p> <p>21 Q. Okay. Anything else you turned in to the 22 jail other than possibly money?</p> <p>23 A. No, sir.</p>
<p>1 seat and, I think, a pack of Swisher Sweet 2 cigars, a partial pack or something.</p> <p>3 I get him -- after I see this stuff 4 right here, I'm -- I pat him down. And I 5 think -- when I -- when I'm trying to get 6 him -- when I get him to the ground, he's 7 got these big -- real big shorts on that 8 are the bagging shorts. So they basically 9 come off of him. He doesn't have on a belt 10 or anything. And so cars are coming by and 11 he's there in his underwear. So I'm trying 12 to get him to get into the back seat of the 13 car, basically trying to save him from some 14 humiliation because he's standing there in 15 his boxers, so -- but he won't comply. He 16 just won't do nothing I'm asking him. So 17 eventually I get him pushed into the back 18 seat because, like I say, traffic is coming 19 by.</p> <p>20 And the other guy, I think Agent Hutson 21 sits him over on the embankment. He's 22 cool. He's not saying anything. He's not 23 resisting in any manner. I call a marked</p>	<p>1 Q. Okay.</p> <p>2 A. If he didn't have any weapons --</p> <p>3 MR. MASTERS: Chris, just answer 4 his question.</p> <p>5 THE WITNESS: Okay.</p> <p>6 Q. Well, what would have been your normal 7 procedure for dealing with confiscated 8 property?</p> <p>9 A. If he didn't have any weapons, normally I 10 would leave it in his pockets because the 11 jail is going to pick that stuff up when he 12 gets there anyway.</p> <p>13 Q. Do you recall whether you did that in this 14 case or not?</p> <p>15 A. No, sir.</p> <p>16 Q. What did you do then after he was trans --</p> <p>17 let me go back.</p> <p>18 You said that you called for a marked 19 unit?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And did a marked unit arrive?</p> <p>22 A. Yes, sir.</p> <p>23 Q. From what jurisdiction was that marked</p>

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1	unit?	1 Mr. Hutson who did the paperwork and the
2	A. Lowndes County.	2 deposition and got the charge --
3	Q. And do you recall who was in that marked	3 A. I think it was me. I think.
4	unit?	4 Q. And the only reason I ask that is I
5	A. Yes, sir.	5 couldn't read the signatures.
6	Q. Who was that?	6 A. Okay.
7	A. Deputy Phil Harding.	7 Q. And tell me about the interview you had
8	Q. And what did Deputy Phil Harding do when he	8 with Mr. Marshall.
9	got on the scene?	9 A. He was calm. We talked just like you and I
10	A. Took Mr. Marshall and put him in the back	10 are talking now. And I asked him for a
11	seat of his vehicle.	11 statement, and he says, I -- he didn't want
12	Q. By that time had Mr. Marshall calmed down?	12 to give me a statement. And so I told him
13	A. No, sir.	13 I understood, and that was the end of it.
14	Q. Still combative?	14 Q. Any sense of how long that interview took?
15	A. No, sir, not combative. Just still ...	15 A. 20, 30 minutes, something like that.
16	Q. Hostile?	16 Q. Going back to the time that Mr. Marshall
17	A. Yes, sir.	17 was transported in the deputy's patrol
18	Q. But you didn't have to -- nobody had to	18 car. What did you do after that, after
19	fight him to get him in the patrol car?	19 Mr. Marshall had been taken away?
20	A. I don't recall, no, sir.	20 A. We -- we actually all left together. I
21	Q. And did the patrol car then leave with	21 think Agent Hutson drove Mr. Marshall's car
22	Mr. Marshall?	22 because it was still fine. And I drove the
23	A. Yes, sir.	23 Lincoln. Phil Harding came on the marked
1	Q. What happened to the passenger?	1 unit. He had Mr. Marshall. His --
2	A. He rode with me.	2 Mr. Marshall's cousin was with me. And
3	Q. And did you have any trouble out of him at	3 Shun drove the Nova.
4	all?	4 I think we may have stopped alongside
5	A. No, sir.	5 the road looking for the evidence or the
6	Q. Do you recall who he was?	6 bag that was thrown out. And I think Phil
7	A. What's that boy's last name?	7 pulled over too. And I think when he
8	I know, but I can't remember right now.	8 pulled over he caught a nail in his tire,
9	Q. Had you had any contact with him before?	9 and so he had -- he sprung a leak in his
10	A. No, sir.	10 tire. So we were maybe a mile -- less than
11	Q. Didn't know him?	11 a mile from Howard Hooks' store. So Phil
12	A. No, sir.	12 drove his car up to Howard Hooks' store. I
13	Q. When's the next time you saw Mr. Marshall?	13 went up with him while he changed the tire,
14	A. I went to interview him a few days later.	14 and Shun took the Nova on back to the jail.
15	Q. At that time had he been charged with	15 Q. When you pulled over to the side of the
16	anything?	16 road, did you retrieve anything?
17	A. Yes, sir.	17 A. I don't remember whether we did at that
18	Q. And do you recall how long he was held	18 time or not. I think we went back and
19	before he was charged?	19 later retrieved it. I don't remember.
20	A. He was charged the day that I arrested him.	20 Maybe we did. I don't remember exactly.
21	Q. And you signed a warrant on him?	21 Q. What did you retrieve?
22	A. Yes, sir.	22 A. A baggy containing residue.
23	Q. Do you recall whether it was you or	23 Q. And what did you do with that baggy?

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1	A. I sent it to forensics.	1	Q. And the following page?
2	Q. Tell me about how you, quote, sent it to	2	A. It's the evidence submission form for
3	forensics.	3	latent prints.
4	A. I bagged it up in a brown paper bag because	4	Q. And the following page?
5	we were seeking a fingerprint analysis. I	5	A. It's the -- it's just a copy of the same
6	labeled it to get -- for fingerprint	6	form.
7	analysis. The fingerprint analysts weren't	7	Q. And down at the bottom it would indicate --
8	able to recover any fingerprints off of	8	it would seem to indicate that the chain of
9	it. Once I received it from fingerprint	9	custody as to the page we're on was not as
10	analysis, I sent it to forensics, to drug	10	complete as the previous page?
11	analysis, and they weren't able to	11	A. Say what, now?
12	determine because there was just not enough	12	Q. The previous page of the fingerprint
13	residue in the bag.	13	examination request seems to show a full
14	So I got both of those back, and they	14	chain of custody down at the bottom. In
15	were just both -- both of the results. And	15	other words, it shows it was received by,
16	there was --	16	returned to, and then returned by.
17	Q. There was sufficient residue for you to see	17	A. Oh, okay.
18	that there was residue?	18	Q. And there's three signatures. And the next
19	A. Yes, sir.	19	page seems to just be the original
20	Q. And yet it was not sufficient for forensics	20	submission.
21	to make a determination?	21	A. You mean the final page?
22	A. That's correct.	22	Q. No, no.
23	Q. And you received a report back from	23	A. Oh, okay.
1	forensics?	1	Q. Okay.
2	A. Yes, sir.	2	A. So are you saying that this guy, Shannon
3	Q. Let me show you what we will mark as	3	Fitzgerald, received it from me and then on
4	Plaintiff's Exhibit Number 1.	4	this page right here is the one where the
5	(Plaintiff's Exhibit 1 was marked	5	actual examination took place?
6	for identification.)	6	Q. Right.
7	Q. I'm showing you what we've marked as	7	A. Okay.
8	Plaintiff's Exhibit Number 1 and ask you if	8	Q. Is that pretty much the way it looks to
9	you recognize that.	9	you?
10	A. Yes, sir.	10	A. That's the way it appears.
11	Q. And what is that, please?	11	Q. Okay. And then let's go to the last page.
12	A. It's an evidence submission form.	12	What is that?
13	Q. And that's page 1?	13	A. This is the -- I guess the findings from
14	A. That's the submission form.	14	the examination.
15	Q. Okay. Let's go to page 2. What is that?	15	Q. All right. Let's go back to this third,
16	A. That's the receipt of submission from	16	fourth -- yeah, the third page, the
17	forensic sciences.	17	certificate of analysis.
18	Q. And that's done in order to preserve what	18	A. Yeah.
19	we call the chain of custody?	19	Q. What was the result of that analysis as far
20	A. Yes, sir.	20	as you can tell?
21	Q. What is the next page?	21	A. That the analysis of the residue failed to
22	A. This is the certificate of analysis from	22	reveal the presence of any controlled
23	forensic sciences.	23	substances.

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<p>1 Q. So they were able to perform an analysis?</p> <p>2 A. Yes, sir.</p> <p>3 Q. But simply couldn't find any controlled</p> <p>4 substance?</p> <p>5 A. Couldn't find any controlled substance.</p> <p>6 Q. And the last page, which is the report of</p> <p>7 the fingerprint analysis, what was the</p> <p>8 finding there?</p> <p>9 A. No latent prints of value were found on the</p> <p>10 evidence.</p> <p>11 Q. Okay. But Mr. Marshall was in fact charged</p> <p>12 with possession of controlled substance?</p> <p>13 A. That's correct.</p> <p>14 Q. Was he charged with anything else?</p> <p>15 A. I don't remember. Pistol without a permit,</p> <p>16 I think.</p> <p>17 Q. Had you seen that pistol in Mr. Marshall's</p> <p>18 possession prior to the time you executed</p> <p>19 the PIT maneuver?</p> <p>20 A. No, sir.</p> <p>21 (Plaintiff's Exhibit 2 was marked</p> <p>22 for identification.)</p> <p>23 Q. Let me show you what's marked as</p>	<p>1 Q. Let me show you what I've marked as</p> <p>2 Plaintiff's Exhibit Number 3 and see if you</p> <p>3 recognize that.</p> <p>4 A. Yes, sir.</p> <p>5 Q. What is that?</p> <p>6 A. It's a deposition.</p> <p>7 Q. And what is a deposition used for in this</p> <p>8 context?</p> <p>9 A. Probable cause for the clerk to issue a</p> <p>10 warrant.</p> <p>11 Q. And this is the deposition relating to</p> <p>12 possession of controlled substance and</p> <p>13 pistol without a permit; correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Who filled out this form?</p> <p>16 A. I did.</p> <p>17 Q. Okay. Looking on the second page up at the</p> <p>18 top where it says complainant, whose</p> <p>19 signature is that?</p> <p>20 A. That's my signature.</p> <p>21 Q. And it says offender attempted to elude DTF</p> <p>22 agents at the same time throwing drug</p> <p>23 evidence out the window.</p>
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<p>1 Plaintiff's Exhibit Number 2 and see if you</p> <p>2 recognize that. What is that, please?</p> <p>3 A. It's a warning citation.</p> <p>4 Q. And it was for attempting to elude and no</p> <p>5 seatbelt; correct?</p> <p>6 A. That's correct.</p> <p>7 Q. With regard to that seatbelt violation, do</p> <p>8 you have any idea whether 1971 Chevrolets</p> <p>9 were even equipped with shoulder harnesses?</p> <p>10 A. No, sir.</p> <p>11 Q. Okay. So it may well be that shoulder</p> <p>12 harnesses were not even available as far as</p> <p>13 you know in 1971?</p> <p>14 A. As far as I know.</p> <p>15 MR. MASTERS: Object to the form.</p> <p>16 A. That's correct.</p> <p>17 Q. And if he had had a seatbelt and not a</p> <p>18 shoulder harness, would you have been able</p> <p>19 to see that from your perspective while</p> <p>20 following him?</p> <p>21 A. No, sir.</p> <p>22 (Plaintiff's Exhibit 3 was marked</p> <p>23 for identification.)</p>	<p>1 Going back to what you had said a</p> <p>2 little earlier. You had said when</p> <p>3 Mr. Marshall turned onto Highway 21 toward</p> <p>4 Wilcox County --</p> <p>5 A. Yes, sir.</p> <p>6 Q. -- he sped up a little --</p> <p>7 A. Yes, sir.</p> <p>8 Q. -- but that his car really was not capable</p> <p>9 of going very fast?</p> <p>10 A. No, sir.</p> <p>11 Q. How fast, if you have a judgment, was</p> <p>12 Mr. Marshall going at the time that you</p> <p>13 executed the PIT maneuver?</p> <p>14 A. I'm not sure.</p> <p>15 Q. But you weren't exceeding the speed limit?</p> <p>16 A. I don't remember.</p> <p>17 Q. But you don't have a sense that you were --</p> <p>18 as of today -- and since you don't</p> <p>19 remember, I'm just trying to clarify this.</p> <p>20 Do you have a sense today that you were in</p> <p>21 a high speed chase?</p> <p>22 A. I would say so, yes, sir.</p> <p>23 Q. Okay. So how high do you think the speed</p>

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Page 49	Page 51
1 was?	1 this is, please.
2 A. I just -- I don't remember.	2 A. It's the complaint and the warrant.
3 Q. So it said attempted to elude DTF agents at	3 Q. Okay. And this also bears your signature?
4 the same time. Isn't it true what you	4 A. Yes, sir.
5 meant by that was he simply failed to stop?	5 Q. On the first page?
6 MR. MASTERS: Object to the form.	6 A. Yes, sir.
7 A. I don't know. I mean, I guess that depends	7 Q. And on the second page down at the bottom
8 on how you look at it.	8 where it says sheriff, by, is that also
9 Q. I guess it does. But he didn't attempt to	9 your signature?
10 turn on to any other roads and lead you on	10 A. Yes, sir.
11 this path through the woods or anything	11 Q. And that's simply the document that makes
12 like that?	12 the charge against Mr. Marshall --
13 A. No, sir.	13 A. That's right.
14 Q. Okay. He simply turned back toward what	14 Q. -- on the first page, and on the second
15 you knew to be his residence?	15 page it's a warrant to arrest him?
16 A. Yes, sir.	16 A. That's correct.
17 MR. MASTERS: Object to the form.	17 (Plaintiff's Exhibit 5 was marked
18 Q. And it says throwing drug evidence out of	18 for identification.)
19 the window. But at this point you don't	19 Q. Okay. And I think the last thing is
20 have any evidence whatsoever that he	20 Plaintiff's Exhibit Number 5. Tell me what
21 actually threw drug evidence out?	21 that is, please.
22 A. No, sir.	22 A. It's an incident/offense report.
23 Q. Offender was forced from the roadway onto	23 Q. Okay. We've gone through several pieces of
1 the opposite side of the roadway where his	1 paper that you have either authored or had
2 vehicle came to rest. Offender was not	2 something to do with. Tell me all of the
3 wearing seatbelt and was highly	3 paperwork that you have to fill out in
4 belligerent, cursing, very combative, and	4 making an arrest such as you made on
5 obviously highly agitated. Have you told	5 Mr. Marshall.
6 me everything about that that you can	6 A. You mean for a case file or --
7 recall when you described it earlier?	7 Q. Yeah. Yeah. Have we in front of us all of
8 A. His demeanor?	8 the paperwork that you have executed on
9 Q. Yeah.	9 Mr. Marshall?
10 A. Yeah, I guess. I mean, if I could think of	10 A. You don't -- my statement form is not here.
11 a few more words to use, I'd use them.	11 Q. Right. But other than that.
12 Q. Okay. There also was a passenger in the	12 A. There's an arrest report that's not here.
13 vehicle. Both individuals were detained	13 Q. Okay. Look on the third page of the
14 and transported to the Lowndes County	14 exhibit I've just handed you.
15 Detention Facility. And have you told me	15 A. Okay.
16 everything you can recall about their	16 Q. Is that the arrest report?
17 arrest and transportation?	17 A. This is the arrest report right here.
18 A. Yes, sir.	18 Q. Is what you have in these exhibits that
19 (Plaintiff's Exhibit 4 was marked	19 I've given you all of the paperwork you
20 for identification.)	20 would have completed on Mr. Marshall?
21 Q. Okay. Let me show you what's marked as	21 A. Yes, sir, I believe so.
22 Plaintiff's Exhibit Number 4. And this is	22 Q. All right. Let's go to Plaintiff's Exhibit
23 simply a two-page document. Tell me what	23 Number 5. That's a uniform

	Page 53	Page 55
1	incident/offense report?	1 arrest report?
2	A. That's right.	2 A. Yes.
3	Q. And tell me what that's for. What's the	3 Q. And you normally maintain those in your
4	purpose of that?	4 case file --
5	A. It just lists myself as whoever is making	5 A. That's correct.
6	out the report, the agency, the charges or	6 Q. -- in the normal course of business?
7	the incident, the place of occurrence, the	7 A. That's correct.
8	date and time. And there's an area in here	8 Q. All right. Now, you had mentioned that you
9	where you will list items that will be	9 had a statement also that you wrote out.
10	recovered or whatever. And then down at	10 I'm going to show you Plaintiff's Exhibit
11	the bottom -- underneath that it will list	11 Number 6 and ask you if that's a copy of
12	the dollar amount for the items recovered,	12 your statement.
13	vehicle information.	13 (Plaintiff's Exhibit 6 was marked
14	On the back page is the information for	14 for identification.)
15	the offender or whoever, suspect, and then	15 A. Yes, sir.
16	an area for the witnesses, a narrative, and	16 Q. Okay. Let's go through this for just a
17	then an area for the signature of the	17 second if we could.
18	officer or whoever the complainant is and	18 A. Okay.
19	case disposition area.	19 Q. And I think this will be close to the last
20	Q. And did you fill out these first two	20 thing that we're going to do today.
21	pages?	21 This was June 28th, 2005. Is that the
22	A. Yes, sir.	22 date that all this happened?
23	Q. And that's your signature at the bottom of	23 A. Yes, sir.
1	the second page?	Q. And the time, 7:32 p.m., is that the time
2	A. Yes, sir.	that you wrote the statement?
3	Q. And then tell me about this third page,	3 A. Yes, sir.
4	which is the Alabama Uniform Arrest Report.	4 Q. This indicates that the incident happened
5	A. Basically the jail does this. They do this	5 sometime at about one o'clock this
6	in booking. And it has the -- you see the	6 afternoon --
7	defendant's name up at the top, his height,	7 A. That's right.
8	weight, color, all of his information, the	8 Q. -- that afternoon.
9	place -- the occurrence of the arrest and	9 A. Uh-huh (positive response).
10	the charges and then the officer that did	10 Q. And you say that you were traveling with
11	the booking.	11 Mr. Hutson north on Lowndes County Road 7
12	Q. And that would be Marilyn Mealing?	12 and met Mr. Marshall's blue Chevrolet Nova.
13	A. That's correct.	13 A. Yes, sir.
14	Q. Do you know her?	14 Q. You turned around in an attempt to catch up
15	A. Yes, sir.	15 with the vehicle.
16	Q. And is that her signature?	16 A. That's correct.
17	A. I guess it is.	17 Q. As we caught up with the vehicle, I
18	Q. Have you seen her signature before?	18 observed that neither the driver nor the
19	A. No.	19 passenger were wearing seat belts. Why was
20	Q. Okay. Did you retain a copy of this	20 that important to you? Why did you put
21	Alabama Uniform Arrest Report?	21 that in there?
22	A. Yes.	22 A. Probable cause for the stop.
23	Q. And is this a true and correct copy of that	23 Q. But what you really wanted to talk to him

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1 about was drugs?	1 of the page. I instructed Mr. Marshall to
2 A. That's correct.	2 exit his vehicle and get on the ground.
3 Q. And you placed your blue light on the dash	3 A. Okay.
4 to gain the attention of the driver. And	4 Q. You see that?
5 you pulled beside his vehicle, showed	5 A. Yes.
6 badges. It says here we showed the driver	6 Q. Did he ever make a violent move toward you?
7 our badges. Earlier you mentioned that	7 A. No. We had weapons drawn.
8 Mr. Hutson showed the driver his badge.	8 Q. Okay. Never attempted to hit you or
9 Did you show the driver your badge as well?	9 anything else?
10 A. If that's what the state -- but it also	10 A. No. He's at his vehicle. We're at ours.
11 says that the driver looked out the window	11 Q. Never attempted to run away?
12 and screamed that he wasn't going to pull	12 A. No, sir.
13 the vehicle over.	13 Q. Fired my service weapon into the ground. I
14 Q. No. The question was, did you show him	14 meant to ask you about that. Does the
15 your badge as well?	15 Lowndes County Sheriff's Office have a use
16 A. If that's what the statement says, then I	16 of force policy?
17 did it.	17 A. Yes, sir.
18 Q. Do you have any independent recollection of	18 Q. And what does that use of force policy say
19 showing him your badge?	19 about discharging a firearm?
20 A. It's been two years, almost three years. I	20 A. I'm not exactly sure.
21 don't -- I can't remember whether I did or	21 Q. Okay. On the second page it says, again,
22 not.	22 that you located and recovered an empty
23 Q. Fair enough. And it says that he threw	23 torn baggy that at one time had contained
Page 58	Page 60
1 drug evidence out the window at about the	1 cocaine. And you've signed that?
2 102 mile marker. And if I'm correct, based	2 A. Yes, sir.
3 on the analysis and your recollection of	3 Q. Okay. Are you sure that at one time that
4 that analysis, there was nothing to	4 it contained cocaine?
5 indicate it was drug evidence, correct, in	5 MR. MASTERS: Object to the form.
6 the final analysis?	6 A. Yes, sir.
7 A. That's correct.	7 Q. And that is your statement that you wrote
8 Q. But at that time you thought it was drug	8 in connection with this case?
9 residue?	9 A. Yes, sir.
10 A. I still believe that.	10 Q. How were you dressed that day?
11 Q. Okay. Did you do any field tests on that	11 A. I don't remember.
12 residue?	12 Q. Middle of June -- or end of June. Pretty
13 A. No, sir.	13 hot. Were you probably -- were you
14 Q. Have you got the equipment to do field	14 wearing -- do you recall whether or not you
15 tests?	15 would have been wearing short-sleeve shirts
16 A. Yes, sir.	16 at that time?
17 Q. You don't have gas chromatography?	17 A. Probably.
18 A. No, sir.	18 Q. Okay. And the drug task force operates in
19 Q. Pursued Mr. Marshall for 2.4 miles.	19 some cases undercover; correct?
20 Marshall was still responding violently.	20 A. That's correct.
21 Did he ever make a violent move toward you?	21 Q. You operate in plain clothes?
22 A. Where are you at?	22 A. That's correct.
23 Q. I'm down here at the -- close to the bottom	23 MR. LEWIS: Let me have about five

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	Page 61		Page 63
1	minutes, Daryl.	1	CHRISTOPHER WEST
2	MR. MASTERS. That's fine. Take	2	who was duly sworn by me to speak the truth, the
3	whatever time you need.	3	whole truth and nothing but the truth, in the
4	(A brief recess was taken.)	4	matter of:
5	Q. (Mr. Lewis continuing:) I have just a	5	RICHARD MARSHALL,
6	couple more questions.	6	Plaintiff,
7	Did you fill out a use of force report	7	vs.
8	form following the discharge of your	8	CHRIS WEST, in his individual
9	weapon?	9	Capacity, LASHUN HUTSON, in his
10	A. At that time I don't believe our department	10	Individual capacity,
11	had one. And I still don't believe we had	11	Defendants.
12	one, but what I did do was I did a	12	IN THE UNITED STATES DISTRICT COURT
13	statement and gave it to the sheriff.	13	FOR THE MIDDLE DISTRICT OF ALABAMA
14	Q. Is that the statement that we've just	14	NORTHERN DIVISION
15	seen?	15	Case Number 2:06-cv-701-ID.CSC
16	A. I think it's the same statement.	16	on January 21, 2008.
17	Q. Were you reprimanded in any way for doing	17	The foregoing 62 computer-printed pages
18	that?	18	contain a true and correct transcript of the
19	A. No, sir.	19	examination of said witness by counsel for the
20	Q. Have you ever been reprimanded during your	20	parties set out herein. The reading and signing of
21	period with the Lowndes County Sheriff's	21	same is hereby waived.
22	Office?	22	I further certify that I am neither of
23	A. Not one time.	23	kin nor of counsel to the parties to said cause nor
	Page 62		Page 64
1	Q. Are you aware of any citizen complaints	1	in any manner interested in the results thereof.
2	against you that were investigated?	2	This 6th day of February 2008.
3	A. I'm sure citizens have complained.	3	
4	MR. LEWIS: I believe that's all I	4	
5	have. Thank you.	5	
6	(Deposition concluded at	6	Tracye Sadler Blackwell
7	approximately 10:35 a.m.)	7	ACCR No. 294
8	* * * * *	8	Expiration date: 9-30-2008
9	FURTHER DEponent SAITH NOT	9	Certified Court Reporter
10	* * * * *	10	and Commissioner for the State
11		11	of Alabama at Large
12	REPORTER'S CERTIFICATE	12	
13		13	
14		14	
15	STATE OF ALABAMA:	15	
16	MONTGOMERY COUNTY:	16	
17		17	
18	I, Tracye Sadler Blackwell, Certified	18	
19	Court Reporter and Commissioner for the State of	19	
20	Alabama at Large, do hereby certify that I reported	20	
21	the deposition of:	21	
22		22	
23		23	

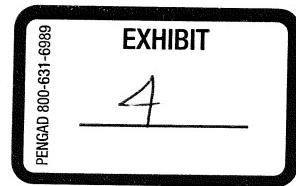
DEPOSITION OF G. LASHUN HUTSON

January 21, 2008

Pages 1 through 38

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Deposition of G. Lashun Hutson

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Page 3

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE MIDDLE DISTRICT OF ALABAMA
 3 NORTHERN DIVISION

4
 5 RICHARD MARSHALL,
 6 Plaintiff,
 7 vs. CIVIL ACTION NO.
 8 2:06-cv-701-ID.CSC

9
 10 CHRIS WEST, in his individual
 11 capacity, LASHUN HUTSON, in his
 12 individual capacity,

13 Defendants.

14 *****

15 DEPOSITION OF G. LASHUN HUTSON, taken
 16 pursuant to stipulation and agreement before Tracye
 17 Sadler Blackwell, Certified Court Reporter and
 18 Commissioner for the State of Alabama at Large, in
 19 the Law Offices of Webb & Eley, 7475 Halcyon Pointe
 20 Drive, Montgomery, Alabama, on January 21, 2008,
 21 commencing at approximately 10:40 a.m.

22 *****

1 APPEARANCES

2 ON BEHALF OF THE PLAINTIFF:

3 Mr. Jay Lewis
 4 Law Offices of Jay Lewis
 5 Attorney at Law
 6 847 South McDonough Street
 7 Montgomery, Alabama

8 ON BEHALF OF THE DEFENDANTS:

9 Mr. Daryl L. Masters
 10 WEBB & ELEY, P.C.
 11 Attorneys at Law
 12 7475 Halcyon Pointe Drive
 13 Montgomery, AL 36117
 14 Mr. Rick A. Howard
 15 NIX, HOLTSFORD, GILLILAND, HIGGINS & HITSON
 16 Attorneys at Law
 17 Suite 300
 18 4001 Carmichael Road
 19 Montgomery, AL 36106

20 ALSO PRESENT:

21 Mr. Christopher West

22 *****

1 EXAMINATION INDEX

2 BY MR. LEWIS 5

6 PLAINTIFF'S EXHIBIT

7 7 6-28-05 Statement Form of Lashun Hutson 34

8 *****

9 STIPULATIONS

10 It is hereby stipulated and agreed by and
 11 between counsel representing the parties that the
 12 deposition of G. LASHUN HUTSON is taken pursuant to
 13 the Federal Rules of Civil Procedure and that said
 14 deposition may be taken before Tracye Sadler
 15 Blackwell, Certified Court Reporter and
 16 Commissioner for the State of Alabama at Large,
 17 without the formality of a commission, that
 18 objections to questions other than objections as to
 19 the form of the question need not be made at this

Page 2

Page 4

1 as the said deposition may be offered in evidence
 2 or used for any other purpose by either party
 3 provided for by the Statute.

4 It is further stipulated and agreed by and
 5 between counsel representing the parties in this
 6 case that the filing of said deposition is hereby
 7 waived and may be introduced at the trial of this
 8 case or used in any other manner by either party
 9 hereto provided for by the Statute regardless of
 10 the waiving of the filing of the same.

11 It is further stipulated and agreed by and
 12 between the parties hereto and the witness that the
 13 signature of the witness to this deposition is
 14 hereby waived.

15 *****

16 THE COURT REPORTER: Usual
 17 stipulations?

18 MR. HOWARD: Sure.

19 MR. MASTERS: Sure.

Page 5	Page 8
1 G. LASHUN HUTSON	1 enforcement?
2 The witness, after having first been duly sworn	2 A. Not over six weeks. Some two-week
3 to speak the truth, the whole truth, and nothing	3 courses. No six-week courses.
4 but the truth, testified as follows:	4 Q. Do you have any particular certifications
5 EXAMINATION	5 in any special branch of law enforcement?
6 BY MR. LEWIS:	6 A. Drug enforcement.
7 Q. Tell us your name, please.	7 Q. How did you get your training for drug
8 A. G. Lashun Hutson.	8 enforcement?
9 Q. Mr. Hutson, how are you employed?	9 A. The academy in Mississippi.
10 A. Lowndes County Sheriff's Department.	10 Q. How long a course was that?
11 Q. And what's your position there?	11 A. I think that course is three weeks, two
12 A. Sheriff's deputy.	12 weeks.
13 Q. Do you have any particular rank?	13 Q. When did you go to that?
14 A. No.	14 A. About three and a half years ago.
15 Q. On June 28th, 2005, where were you	15 Q. Okay. And what's your address?
16 employed?	16 A. My work address or --
17 A. 2nd Judicial Drug Task Force.	17 Q. Physical, home address.
18 Q. Were you employed with any city police	18 A. It's going to be 3716 Fieldcrest Drive.
19 agency?	19 Q. 3716 --
20 A. Hayneville Police, yes, sir.	20 A. 16.
21 Q. But now you're with the Lowndes County	21 Q. -- Fieldcrest?
22 Sheriff's Office?	22 A. Uh-huh (positive response).
23 A. Uh-huh (positive response).	23 Q. And what city is that?
1 Q. You're going to have to say yes or no.	1 A. Montgomery.
2 A. Yes.	2 Q. Is that in the Fieldcrest Apartments?
3 Q. Okay. Tell me about your educational	3 A. No. Those are houses.
4 background.	4 Q. Houses. Okay. What's your date of birth?
5 A. My educational background?	5 A. 9-21-58.
6 Q. Yeah.	6 Q. And did you tell me when you graduated from
7 A. High school graduate. I've got some	7 high school?
8 college. Marine Corps. I've got a lot of	8 A. 1977.
9 training from there.	9 Q. And what college have you attended?
10 Q. How much college?	10 A. Albany State.
11 A. Couple of semesters.	11 Q. Where?
12 Q. When did you graduate from high school?	12 A. Albany State in Georgia.
13 A. '77.	13 Q. Albany State. Okay. And when did you join
14 Q. All right. Have you been to any advanced	14 the -- well, tell me about your law
15 law enforcement training?	15 enforcement employment experience. When
16 A. I've been to a few.	16 did you first get into law enforcement?
17 Q. All right. Have you been to the FBI	17 A. First got into law enforcement in 1995
18 Academy at Quantico?	18 after I got out of the Marine Corps with
19 A. No.	19 the Dougherty County Sheriff's Department.
20 Q. Any law enforcement experience outside of	20 I worked corrections with them from '95
21 the academy that's required for POST	21 until '98 when I came to Lowndes County.
22 certification, any long-term -- by that I	22 Q. And in 1998 what agency did you work for?
23 mean over six weeks -- courses in law	23 A. Sheriff's department. Lowndes County

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1 Sheriff's Department.
 2 Q. How long did you stay with Lowndes County
 3 Sheriff's Office?
 4 A. About two years, three years. I can't
 5 remember.
 6 Q. Where did you go from there?
 7 A. Hayneville Police Department.
 8 Q. And did you remain at the Hayneville Police
 9 Department from the time you left the
 10 sheriff's office until the time you
 11 returned to the sheriff's office?
 12 A. Right.
 13 Q. So that would have -- when did you return
 14 to the sheriff's office?
 15 A. I can't give you the -- I don't -- I don't
 16 know.
 17 Q. But during 2005 you were still with
 18 Hayneville Police Department?
 19 A. Right.
 20 Q. All right. Are you familiar with the use
 21 of force policy of the Lowndes County
 22 Sheriff's Office?
 23 A. I'm not familiar with it, but I think they

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1 Q. In Hayneville?
 2 A. In Hayneville.
 3 Q. Do you recall who else was on duty that day
 4 with the DTF?
 5 By DTF, I mean drug task force.
 6 A. I can't tell you exactly who was on and who
 7 was off. That would be up to Lieutenant
 8 West. But I was on and Lieutenant West was
 9 on.
 10 Q. Do you recall why you left the DTF office?
 11 A. I probably left more than one time. But
 12 the last time I left it was with Lieutenant
 13 West.
 14 Q. All right. What did you leave in?
 15 A. We left in a blue Lincoln.
 16 Q. What was the purpose of leaving with
 17 Mr. West?
 18 A. We were going to a gentleman's house by the
 19 name of -- I know him as "Blood." You guys
 20 keep calling him Mr. Marshall -- that lives
 21 up in the -- south of Hayneville.
 22 Q. Did you know Mr. Marshall?
 23 A. I had heard his name, "Blood."

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1 have one.
 2 Q. All right. Have you ever filled out a use
 3 of force report?
 4 A. No.
 5 Q. Tell me what you were doing on June 28th,
 6 2005, which we all agree is the date of the
 7 incident involving Mr. Marshall.
 8 A. What I was doing at what time?
 9 Q. Well, starting early in that day what were
 10 you -- when you got to work, what were you
 11 doing?
 12 A. It's hard to say exactly what I was doing.
 13 Q. At what time did you -- if you did, did you
 14 leave the sheriff's office?
 15 A. You mean the DTF office?
 16 Q. I'm sorry. The DTF office.
 17 A. It's hard to say exactly what time I left.
 18 Q. And the DTF office is a separate facility;
 19 correct?
 20 A. Correct.
 21 Q. And where is the DTF office?
 22 A. It's down the street from the sheriff's
 23 office.

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1 Q. Had you met him?
 2 A. Not yet.
 3 Q. Okay. So prior to the time that you went
 4 out with Mr. West you had not had any law
 5 enforcement contact with Mr. Marshall?
 6 A. No, I hadn't.
 7 Q. Do you know why you were going out looking
 8 for Mr. Marshall?
 9 A. I was going with Lieutenant West. He
 10 needed to talk to him.
 11 Q. You didn't have any independent knowledge
 12 of why you were out there?
 13 A. No. I had an inkling why we were out
 14 there, but as far as specifics, no.
 15 Q. All right. What was that inkling?
 16 A. Dope.
 17 Q. Had you personally received any information
 18 about Mr. Marshall and any dope?
 19 A. I had heard his name.
 20 Q. In connection with what?
 21 A. In connection with the sale of drugs.
 22 Q. From whom did you hear his name?
 23 A. People.

	Page 13	Page 15
1	Q. You want to elaborate on that?	1 to arrest Mr. Marshall?
2	A. No.	2 A. No.
3	Q. Do you recall what people you heard talking	3 Q. Since this incident have you had occasion
4	about Mr. Marshall with drugs?	4 to know whether Mr. Marshall has been
5	A. People in that line of business.	5 arrested by anybody else?
6	Q. And what people are you talking about?	6 A. No.
7	A. People I may have arrested that wanted to	7 Q. So you see a blue Chevrolet Nova after
8	help themselves out.	8 Mr. West says there's his car or there he
9	Q. Do you have any specific names of people?	9 is?
10	A. No.	10 A. Uh-huh (positive response).
11	Q. All right. So you leave with	11 Q. Okay. What happens then?
12	Mr. Marshall. Tell me what happens then.	12 A. Lieutenant goes down. We pass each other.
13	A. Lieutenant and I, we go to Mr. Marshall's	13 Lieutenant turns around and we come back up
14	house. He wasn't there. We did knock.	14 behind him to make a stop.
15	Nobody came to the door. We left and we	15 Q. And what was your purpose for making a
16	was having a conversation on the way back	16 stop?
17	about a little community I was familiar	17 A. I -- I don't know. Whatever Lieutenant
18	with called Casey.	18 West told you his probable cause was for
19	Q. Is that C-A-S-E-Y?	19 stopping him.
20	A. Correct.	20 Q. Did you see any probable cause for making a
21	Q. And what did you tell Mr. Marshall about --	21 stop?
22	I mean, Mr. West about the Casey community?	22 A. I wasn't driving.
23	A. He asked me -- he said, where is it? I	23 Q. No. That wasn't the question. Did you see
	Page 14	Page 16
1	said, it's right down on County Road 7. I	1 any probable cause for making a stop?
2	said, he might be down there. And so we	2 A. I wasn't driving.
3	were going to head down there. I was	3 Q. Let me rephrase the question.
4	looking for another individual. And as we	4 A. Okay.
5	were going down County Road 7, Lieutenant	5 Q. Did you see any probable cause for making a
6	perks up and said, there he goes right	6 stop?
7	there. And I'm looking and I see the blue	7 A. Let me see if I can -- I wasn't driving.
8	Nova coming at us.	8 MR. HOWARD: If you saw it, yes.
9	Q. Who is driving the car?	9 If you didn't see it, no, or
10	A. Which car?	10 were you looking? Just answer
11	Q. Your car.	11 his question.
12	A. Lieutenant West.	12 A. No. I just looked -- when he said there he
13	Q. All right. What reason did you have to	13 is, I looked and I identified the subject.
14	believe that Mr. Marshall might be at the	14 I wasn't looking for a probable cause.
15	Casey community?	15 Q. So you didn't see any probable cause
16	A. I've heard his name in the community of the	16 because you weren't looking for any?
17	drug community that he's a drug dealer and	17 A. Right.
18	he, you know, frequents different	18 Q. Okay. So if there was probable cause
19	communities and Casey was one of them.	19 determined, it was Mr. West who determined
20	Q. Other than this incident on June 28th,	20 it?
21	2005, have you ever arrested Mr. Marshall?	21 A. Correct.
22	A. No.	22 Q. Okay. You said that you looked and you saw
23	Q. Since this incident have you had occasion	23 that it was Mr. Marshall?

Page 17

1 A. I looked and saw an individual driving the
 2 car. There was two individuals in it, and
 3 I looked and saw the individual driving the
 4 car.
 5 Q. You didn't know him as Mr. Marshall?
 6 A. No.
 7 Q. Because you had never met Mr. Marshall?
 8 A. No.
 9 Q. All right. So Lieutenant West turns his
 10 car around and pulls in behind
 11 Mr. Marshall's car or the car that you've
 12 identified as being the blue Nova you were
 13 looking for?
 14 A. Right.
 15 Q. How fast was that Nova going?
 16 A. I would have guessed the speed limit.
 17 Q. Did he speed up after you pulled in behind
 18 it?
 19 A. Once we got on 21 he did.
 20 Q. But he didn't until you got to 21?
 21 A. No.
 22 Q. All right. What happened after you pulled
 23 in behind him?

Page 19

1 A. Yes. We had came out of the curve. When
 2 we got on the straightaway, Lieutenant got
 3 to the side of them.
 4 Q. What, if anything, did you do at that time?
 5 A. At that time I rolled my window down, I
 6 pulled my badge, and I said, pull over.
 7 And he looked, and he said, what y'all
 8 want, man? And I said, pull over. And he
 9 kept driving.
 10 Q. What happened then?
 11 A. After he got back behind him -- I can't
 12 remember if it's because of oncoming
 13 traffic or for whatever reason he got back
 14 behind him. And the blue light was still
 15 going. And then we had came to the
 16 intersection of 21.
 17 Q. All right. Which way did Mr. Marshall
 18 turn?
 19 A. He turned right.
 20 Q. And that's headed toward Wilcox County?
 21 A. South on 21, yes.
 22 Q. So you got onto Highway 21, which is a
 23 larger highway?

Page 18

1 A. I looked -- just looked in the car just to
 2 see -- nobody was moving and Lieutenant
 3 said, go ahead and light them up.
 4 Q. And what did you take that to mean?
 5 A. Turn the blue light on.
 6 Q. Did you do that?
 7 A. Yes.
 8 Q. That car doesn't have built-in blue lights?
 9 A. No.
 10 Q. You had a portable blue light?
 11 A. Had a portable blue light.
 12 Q. Like anybody could buy?
 13 A. Any law enforcement agency could buy.
 14 Q. All right. And where did you put that blue
 15 light?
 16 A. I put it on the dash initially.
 17 Q. Okay. And what happened then?
 18 A. Mr. Marshall looked in his rear-view
 19 mirror, he looked down in his side mirror,
 20 and he just kept driving.
 21 Q. At some point did your car pull up next to
 22 his car while you were still on County
 23 Road 7?

1 A. You could say larger.
 2 Q. Still two-lane?
 3 A. Correct.
 4 Q. Okay. What happened then?
 5 A. We continued behind him. LT found a spot.
 6 He got beside him again. And I reached up.
 7 I got the light off of the dash. It's
 8 still blinking blue. And I got my badge
 9 and I held it up. I said, pull over. And
 10 he said, mother fuck y'all, I ain't
 11 stopping. And about that time LT yells in
 12 my ear and says, pull over, and he -- he's
 13 got his badge up. And we're both yelling,
 14 windows down -- you can imagine how close
 15 we were -- to pull over, but he still
 16 refused.
 17 Q. What were you wearing?
 18 A. I can't tell you exactly what I was
 19 wearing.
 20 Q. Civilian clothes?
 21 A. Probably.
 22 Q. Was that just a blue light or was it a
 23 blue-and-white light?

Page 20

	Page 21	Page 23
1	A. It's a blue light.	1 window and when he tossed something. It
2	Q. Blue light. All right. So after he did 3 not pull over, what did you do then?	2 hit our windshield to be exact.
4	A. I told LT I don't think he's going to 5 stop. And I put the light back on the dash 6 and I sat back. LT dropped back behind 7 him.	3 Q. And did you identify what it was at that 4 time?
8	Q. At any point did you display a weapon --	5 A. Not at that time, no.
9	A. No.	6 Q. You said you came up behind a cattle truck 7 and slowed down. How slow were you going?
10	Q. -- at the time you were driving?	8 A. We were going less than the speed limit at 9 that time.
11	A. No.	10 Q. Had you been going at any time prior to 11 that faster than the speed limit?
12	Q. All right. So Lieutenant West -- and when 13 you say LT, you're talking about Lieutenant 14 West?	12 A. Yes.
15	A. I'm talking about Lieutenant West.	13 Q. How fast would you say is the fastest you 14 were going?
16	Q. Okay. Lieutenant West pulls back behind 17 him; correct?	15 A. If I had to guess -- and it's purely a 16 guess -- I would say about 70.
18	A. Correct.	17 Q. Okay. And the speed limit on that road 18 is --
19	Q. What's the next thing that happens?	19 A. 55.
20	A. We come up on a cattle truck. There's a 21 cattle truck. It slows us down. And LT 22 went to the side, and he "pitted" him.	20 Q. 55. Okay.
23	Q. Okay. When you say he "pitted" him, you're	21 All right. So setting the scene, we've 22 now got Mr. Marshall's car on the shoulder 23 of the road facing back toward Hayneville,
	Page 22	Page 24
1	talking about executing a precision 2 intervention technique?	1 and Lieutenant West pulls his car so it's 2 angled toward Mr. Marshall's car?
3	A. If that's what you're calling it now.	3 A. Correct.
4	Q. Well, what do you call it?	4 Q. What did you do then?
5	A. I don't call it anything.	5 A. We both exited the vehicles, but we stayed 6 behind the doors for protection.
6	Q. Okay. You just "pitted" him?	7 Q. What did you say, if anything?
7	A. Right.	8 A. Lieutenant was yelling to the driver. I 9 just yelled to the passenger, passenger, 10 don't move.
8	Q. And basically that's hitting the driver's 9 side fender of his car with the front 10 passenger's side bumper or fender of your 11 car?	11 Q. And did the passenger move?
12	A. You can do it that way or vice versa.	12 A. No. He sat there like a statue.
13	Q. Well, which way was it done this time?	13 Q. And did the driver move?
14	A. The way you just stated.	14 A. Yes.
15	Q. Okay. And it spun his car out?	15 Q. And what was Mr. West yelling to the 16 driver?
16	A. Correct.	17 A. He told him to exit the vehicle and get on 18 the ground.
17	Q. He ended up going the opposite direction on 18 the other side of the road?	19 Q. All right. What, if anything, did Mr. West 20 do -- or did Mr. Marshall do in response to 21 that?
19	A. On the shoulder, yes.	22 A. He opened the door. He got out, but he 23 stayed between the door and his vehicle.
20	Q. Did you observe anything else while you 21 were driving down the road behind 22 Mr. Marshall?	
23	A. I observed his hand when it came out of the	

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1 Q. So he obeyed the command to get out of the
2 car?
3 A. Yes.
4 Q. Was he saying anything at that time?
5 A. He was cursing, being very belligerent.
6 Q. What, if anything, did Mr. West do?
7 A. He kept yelling the order for him to get on
8 the ground.
9 Q. All right. Did he take any other action?
10 A. Did who take any action?
11 Q. Mr. West.
12 A. He kept yelling for Mr. Marshall to get on
13 the ground.
14 Q. All right. Did he fire his weapon?
15 A. Yes.
16 Q. In what direction did he fire his weapon?
17 A. In Mr. Marshall's direction but into the
18 ground.
19 Q. And at that time were you looking at the
20 passenger or were you looking at
21 Mr. Marshall? Where were you looking?
22 A. My angle, I could see them both. I could
23 look at Mr. Marshall and right past him I

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1 could see the passenger.
2 Q. All right. And after Mr. West fired the
3 shot, what, if anything, did Mr. Marshall
4 do?
5 A. It froze him. Because Mr. Marshall was
6 reaching back into his vehicle, and I
7 believe that's the reason Lieutenant fired
8 his weapon. When he fired the weapon, it
9 froze Mr. Marshall, and he came out.
10 Because I don't think he expected that to
11 happen, so it froze him.
12 Q. So you're holding your hands up. He came
13 out with his hands up?
14 A. Yeah, one on the window of the car and he
15 had the other one like stunned.
16 Q. Up in the air?
17 A. (Witness nods head.)
18 Q. Yes?
19 A. Yes.
20 Q. Did he get on the ground then?
21 A. No.
22 Q. What happened?
23 A. Lieutenant approached him, and once he got

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1 close enough to him where he could put his
2 hands on him, he put him on the ground.
3 Q. At some point did his pants come off? Did
4 Mr. Marshall's pants come off?
5 A. During the tussle with the lieutenant they
6 did.
7 Q. Did you see Mr. Marshall ever take a swing
8 at the lieutenant, ever try to run away,
9 anything like that?
10 A. Nothing like that, no.
11 Q. So Mr. Marshall ends up on the ground with
12 his hands behind him cuffed?
13 A. After Lieutenant put his hands behind him
14 cuffed.
15 Q. Right. And what's happening with the
16 passenger all this time?
17 A. I've still got my weapon on him and he's
18 still sitting there like a statue.
19 Q. At any time did you feel the need to go to
20 the aid of the lieutenant?
21 A. No. He was doing pretty good.
22 Q. All right. At what point did the passenger
23 emerge from the vehicle?

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1 A. Once Lieutenant got the cuffs on
2 Mr. Marshall, then I proceeded around to
3 the passenger.
4 Q. And did the passenger cooperate with you?
5 A. Yes, sir.
6 Q. And you cuffed him and put him on the
7 ground?
8 A. Got him out and then I sat him on the bank
9 there.
10 Q. Tell me what happened then.
11 A. I walked back to the vehicle where
12 Lieutenant was with Mr. Marshall. When I
13 looked inside, I saw the .357 on the seat.
14 Q. And that was a .357 Magnum revolver?
15 A. Yes.
16 Q. Did you search the vehicle?
17 A. I can't remember if we searched it right
18 then or if we searched it later. But we
19 looked in it enough to see that there was a
20 .357 on the seat, bullets on the floorboard
21 and in the ashtray.
22 Q. Do you recall whether or not, whether you
23 searched it at the scene or you searched it

	Page 29		Page 31
1	later, you found anything else of	1	on the ground?
2	contraband nature?	2	A. Right.
3	A. Nothing that I can think of, no, sir.	3	Q. And could that have been while the
4	Q. Just kind of cutting to the chase, did you	4	lieutenant was searching the vehicle?
5	see Mr. West serve Mr. Marshall?	5	A. The lieutenant was leaned over in the
6	A. I saw him pat him down.	6	vehicle, yes.
7	Q. Did you see him remove anything from his	7	Q. On the way back to the sheriff's office
8	pants?	8	what, if anything, happened?
9	A. No.	9	A. Happened with me?
10	Q. Did you see him remove any money?	10	Q. Yeah.
11	A. No.	11	A. Nothing happened with me.
12	Q. Were you watching him enough to know	12	Q. You didn't stop at the side of the road?
13	whether or not he removed any money?	13	A. We stopped when the marked unit got -- tire
14	A. I watched him enough to know that he had	14	started to go down. And I don't remember
15	him secured so I could go secure the	15	that whole incident fully because I wasn't
16	passenger.	16	concentrating on that.
17	Q. So there was a period of time that you just	17	Q. Did you assist in the roadside search for
18	lost sight of what Mr. West and	18	any contraband?
19	Mr. Marshall were doing?	19	A. Yes.
20	A. Yes.	20	Q. And was any contraband located?
21	Q. Because you were concentrating on the	21	A. We located a corner-torn baggy.
22	passenger?	22	Q. And describe that baggy for me.
23	A. Correct.	23	A. A sandwich bag where you would take the
	Page 30		Page 32
1	Q. I think we've already heard that at that	1	corner end and tear it off and tie a knot
2	point Mr. West called for a transportation	2	in it. That's what it looked like.
3	unit, a marked unit, and that another	3	Q. And who took custody of that?
4	deputy came, took Mr. Marshall away, and	4	A. The lieutenant did.
5	the passenger rode with you; is that	5	Q. During that period of time was the
6	correct?	6	passenger in Mr. Marshall's vehicle still
7	A. No.	7	in the lieutenant's vehicle?
8	Q. Okay. Tell me what happened.	8	A. I can't recall.
9	A. The passenger rode with the lieutenant. I	9	Q. Did you have any role in booking
10	drove the Nova.	10	Mr. Marshall or the passenger?
11	Q. Okay. All right. Following the incident	11	A. No.
12	at which Mr. Marshall was handcuffed, did	12	Q. You delivered the passenger where?
13	you see Mr. Marshall become violent in any	13	A. I didn't deliver the passenger.
14	way?	14	Q. Oh, that's right. Mr. West did, didn't he?
15	A. While the lieutenant was in the car, he had	15	A. Uh-huh (positive response).
16	gotten back up off the ground. And I told	16	Q. What did you do with the vehicle?
17	him -- I said, get back on the ground. And	17	A. I parked it in front of the jail.
18	I had to go over and put him back on the	18	Q. Do you know whether or not that vehicle was
19	ground.	19	moved during the period of time that
20	Q. But he didn't attempt to run away?	20	Mr. Marshall was in jail?
21	A. I don't know if he was attempting to run	21	A. Lieutenant came out from where I had parked
22	away or not, but he got up.	22	it. He told me to put it inside. They had
23	Q. But you walked over to him and put him back	23	a secure gate there that locks, and he told

Deposition of G. Lashun Hutson

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1 me to move it and put it inside. That's
 2 the only other incident of it being moved
 3 from where I originally parked it.
 4 Q. Do you know whether that car was driven
 5 during any time other than that while
 6 Mr. Marshall was incarcerated?
 7 A. No.
 8 Q. Did that Chevrolet Nova have shoulder
 9 harnesses?
 10 A. I can't recall. I wish I could.
 11 Q. All right. I have shown you what's marked
 12 as Plaintiff's --
 13 (Brief interruption.)
 14 (Plaintiff's Exhibit 7 was marked
 15 for identification.)
 16 Q. I'll show you this one instead of that
 17 one. Do you recognize what I've marked as
 18 Plaintiff's Exhibit Number 7?
 19 A. Uh-huh (positive response). Yes.
 20 Q. Turn to the second page of that. Whose
 21 signature is that?
 22 A. That's mine.
 23 Q. And did you write this yourself?

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1 A. Yes.
 2 Q. All right. And I just want to take a look
 3 at it for just a second.
 4 About two-thirds down the front page it
 5 indicates that Mr. Marshall accelerated at
 6 one point throwing something from the
 7 driver's side window that was later found
 8 to be drug evidence between the 102 and 104
 9 mile marker.
 10 A. Uh-huh (positive response).
 11 Q. Did you later discover that there was no
 12 drug residue found in that baggy?
 13 A. Yes. Later, after Lieutenant had got the
 14 analysis back from forensics, he told me
 15 that it turned out to be no evidence in it.
 16 Q. Okay. I may have asked you this, and if I
 17 did, I apologize. Did you fill out a use
 18 of force form with regard to any activity
 19 in which you engaged on June 28th, 2005?
 20 A. No.
 21 Q. Is there a policy of the drug task force
 22 that such reports be filled out?
 23 A. If use of force was used -- I'm not sure of

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1 a policy -- we would put it in our
 2 statement.
 3 Q. So this Plaintiff's Exhibit Number 7 would
 4 constitute any report that you would be
 5 required to file?
 6 A. If I had used force.
 7 Q. Were you reprimanded for anything that
 8 happened on that date?
 9 A. No.
 10 Q. Have you ever been reprimanded by the
 11 Lowndes County Sheriff's Office?
 12 A. Yes.
 13 Q. For what?
 14 A. Oh, I can't remember. It was during
 15 Sheriff Varner's time.
 16 Q. You can't recall anything that you were
 17 reprimanded for?
 18 A. Once about a radio. That's -- not
 19 answering the radio or the radio not being
 20 loud -- I can't remember. It was a radio
 21 though.
 22 Q. Anything having to do with citizen
 23 complaints?

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1 A. I'm pretty sure some citizens have
 2 complained.
 3 Q. But were you ever disciplined in connection
 4 with citizen complaints?
 5 A. No. No.
 6 Q. Has your POST certification ever been
 7 suspended?
 8 A. No.
 9 MR. LEWIS: Give us a minute.
 10 (A brief recess was taken.)
 11 Q. (Mr. Lewis continuing:) Did you have
 12 any -- and I may have asked this already.
 13 Did you have any part to play other
 14 than writing that statement that's been
 15 marked as Plaintiff's Exhibit Number 7 in
 16 the booking or prosecution of Mr. Marshall?
 17 A. No, sir.
 18 Q. Did you appear at court in connection with
 19 a case against Mr. Marshall?
 20 A. No.
 21 MR. LEWIS: That's all I have.
 22 (Deposition concluded at
 23 approximately 11:15 a.m.)

Deposition of G. Lashun Hutson

Marshall vs. West; Hutson

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1 * * * * *

2 FURTHER DEONENT SAITH NOT

3 * * * * *

4 REPORTER'S CERTIFICATE

5 STATE OF ALABAMA:

6 MONTGOMERY COUNTY:

7 I, Tracey Sadler Blackwell, Certified

8 Court Reporter and Commissioner for the State of
9 Alabama at Large, do hereby certify that I reported
10 the deposition of:

11 G. LASHUN HUTSON

12 who was duly sworn by me to speak the truth, the
13 whole truth and nothing but the truth, in the
14 matter of:

15 RICHARD MARSHALL,

16 Plaintiff,

17 vs.

18 CHRIS WEST, in his individual
19 Capacity, LASHUN HUTSON, in his
20 Individual capacity,
21 Defendants.

22 IN THE UNITED STATES DISTRICT COURT
23 FOR THE MIDDLE DISTRICT OF ALABAMA

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1 NORTHERN DIVISION

2 Case Number 2:06-cv-701-ID.CSC

3 on January 21, 2008.

4 The foregoing 37 computer-printed pages
5 contain a true and correct transcript of the
6 examination of said witness by counsel for the
7 parties set out herein. The reading and signing of
8 same is hereby waived.

9 I further certify that I am neither of
10 kin nor of counsel to the parties to said cause nor
11 in any manner interested in the results thereof.

12 This 6th day of February 2008.

13 Tracye Sadler Blackwell

14 ACCR No. 294

15 Expiration date: 9-30-2008

16 Certified Court Reporter
17 and Commissioner for the State
18 of Alabama at Large

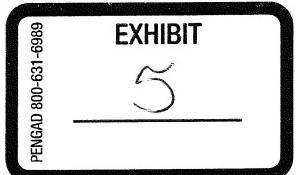
19 20

2nd Judicial Drug Task Force
Drug Agent
Statement Form

Date: June 28, 2005

Time: 7:32pm

Today at about 1:00 pm I along with Agent Lashun Hutson were traveling North on Lowndes County Road 7 when we met Mr. Richard Marshall's blue Chevrolet Nova. I immediately turned around in an attempt to catch up with the vehicle. As we caught up with the vehicle I observed that neither the driver or the passenger were wearing seatbelts, we placed our blue light on the dash of our vehicle to gain the attention of the driver to pull the vehicle over. The driver looked out the window and screamed that he wasn't going to pull the vehicle over. I then pulled beside his vehicle and we showed the driver Mr. Marshall our badges identifying ourselves as law enforcement officers. He still insisted that he would not pull his vehicle over responding in a very violent manner. This incident occurred approximately 2 miles from the Lowndes County Road 7 and Alabama Highway 21 intersection. As we got to the intersection Mr. Marshall turned right onto highway 21 picking up speed and throwing drug evidence out of the driver's window at about the 102 mile marker. We also observed Mr. Marshall moving around in the seat and with his right hand constantly doing something down in the seat. We pursued Mr. Marshall for another 2.4 miles before forcing his vehicle from the roadway. The vehicle came to rest on the embankment on the opposite side of the highway. Once off the highway Agent Hutson and I took cover behind the doors of our vehicle (weapons drawn). I instructed Mr. Marshall to exit his vehicle and get on the ground. He got out of the vehicle but stood in the door still responding violently and not complying with us, at that time I fired my service weapon into the ground in an attempt to quicken Mr. Marshall into compliance but still he did not comply. Next I approached Mr. Marshall and forced him to the ground experiencing some resistance yet having to force his hands behind his back so as to handcuff him. Agent Hutson approached the passenger's side of the vehicle and removed the passenger after I secured Mr. Marshall. After securing Mr. Marshall I noticed a revolver style handgun on the seat of the vehicle and bullets lying on the seat and in the floor. Mr. Marshall was arrested and transported to the Lowndes County Detention



Facility. I later returned to the area of highway 21 where I observed Mr. Marshall throwing out the evidence. While walking the roadway I located and recovered an empty torn baggie that at one time had contained cocaine.

Signature

A handwritten signature consisting of several intersecting, slanted lines forming a stylized, abstract shape.

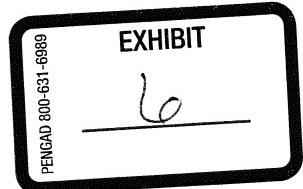
2nd Judicial Circuit
Drug Task Force
Statement Form

Date: June 28, 2005

Time: 18:20

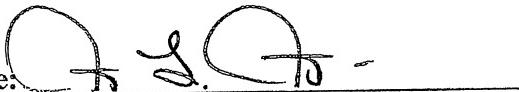
Name: Agent G. LaShun Hutson

On above date at approximately 1:00 pm myself and Lt. C.S. West were traveling North on County Road 7 in Lowndes County when we met Mr. Richard Marshall traveling South in a early model blue Chevrolet Nova. Lt. West stated "That's the vehicle" and began to turn around in an attempt to catch up to the vehicle. Once behind the vehicle the blue light was placed on the dash of our vehicle to alert the driver that he was being stopped, the driver looked in his rear view mirror and left side mirror and continued to drive and began to move around in the seat and appeared to be reaching for something in the seat with his right hand, I stated to Lt. West "Lt. he's moving around a lot I don't think he's going to stop" at which time Lt. West stated "I don't either," at that point we were approximately 2 ½ miles from the intersection of County Road 7 and State Highway 21. Lt. West pulled our vehicle along side Mr. Marshall and I showed him my badge and the blue light and yelled for him to pull over at which time Mr. Marshall stated "Man what the fuck ya'll want" and continued to drive North on County Road 7. We reached State Highway 21 and Mr. Marshall turned south and accelerated at one point throwing something from the driver side window that we later found to be drug evidence between the 102 and 104 mile marker. Mr. Marshall continued South on State Highway 21, Lt. West came along side Mr. Marshall for a second time and I again yelled to Mr. Marshall to pull over at which time he stated "Motherfuck ya'll, I ain't stoppin" At that point Lt. West forced Mr. Marshall to the shoulder of the road and we exited our vehicle with our guns drawn and ordered Mr. Marshall to exit his vehicle with his hands where we could see them, Mr. Marshall exited his vehicle with a very belligerent attitude and cursing. Lt. West ordered Mr. Marshall to get on the ground and Mr. Marshall turned as if he was



getting back into the vehicle and Lt. West fired his service weapon into the ground and stated "Don't get back in that vehicle, get on the ground" Mr. Marshall paused , still being belligerent and cursing at which time Lt. West approached him and put him on the ground by force and cuffed him during which time I had turned my attention to the passenger and approached his side of the vehicle and removed him without incident and cuffed. Once both parties were secure Lt. West and I looked into the vehicle and saw what later became known to us as a Rossi .357 Revolver fully loaded with 6 (six) Hollow Point bullets and an additional 34 (thirty-four) more bullets in the ash tray and on the floor, I asked Mr. Marshall was that his weapon on the seat and he stated "What ever you see is yours because you put it there, ya'll motherfuckers good for that shit." Mr. Marshall and his passenger were taken to the John Hullett Detention Facility to be processed by a Lowndes County Sheriff Deputy as Lt. West and I returned to the area where we saw Mr. Marshall throw something from the car and Lt. west recovered a empty torn baggie that at one time had contained a controlled substance.

Signature:

A handwritten signature consisting of stylized initials and a surname, appearing to read "J. S. G."

SERVING BUTLER, CRENshaw AND LOWNDES COUNTIES
 146 EAST FOURTH STREET
 LUVERNE, ALABAMA 36049
 334-335-3340

COURTESY WARNING

DATE 6-26-05 TIME 2:00 P.M.
For: 6-26-05

SPEEDING _____ MPH _____ MPH ZONE

IMPROPER LANE USAGE FAILURE TO YIELD

IMPROPER TAG FAILURE TO SIGNAL

RED LIGHT FOLLOWING TO CLOSE

STOP SIGN IMPROPER TURN

DEFECTIVE EQUIPMENT _____

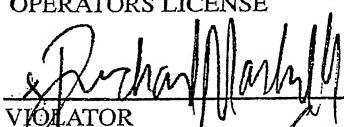
OTHER/REMARKS Attempted to Block, No Seat Belt

MAKE OF VEHICLE Chevrolet YEAR 1971 COLOR Blue

VEHICLE TAG # _____ STATE AL

LOCATION Hwy 21 S. Lowndes County

THIS IS A COURTESY WARNING ONLY AND WILL NOT REFLECT ON YOUR
 OPERATORS LICENSE


 VIOLATOR

6018769 STATE AL
 DRIVERS LICENSE #


 AGENT

ID DE-1

THE LIFE YOU SAVE MAY BE YOUR OWN

EXHIBIT

7

06MG00466

Sub# 1 Received (11/28/2005)

2nd Judicial Drug Task Force
Case# 05-06-011

Evidence Submis

Date: 11-28-05

County: Lowndes

Suspect(s): Richard J. Marshall
Suspect(s):

Race: B Sex: M DOB: Adult
Race: Sex: DOB:

Subject(s):
Subject(s):

Race: Sex: DOB:
Race: Sex: DOB:

Requesting Agent: C.S. West

Title: Commander

Office No. (334) 335-3340 Fax No. (334) 335-6401 Normal Duty Hours: 9am-5pm

Agency: 2d Judicial Circuit Drug Task Force

Mailing Address: PO Box 795 North Tuskeena Street Hayneville, Alabama 36040

Law Enforcement Case No: 05-06-011

Property No.: 01

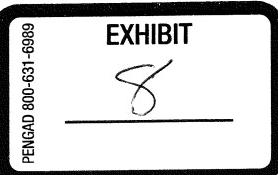
Type Case (CHARGE): Possession

Brief History of Case: Offender found to be in possession while attempting to elude

*Evidence Submitted: residue

Examination Requested: Drug Analysis

***NOTES THAT EVIDENCE IS IN A CLEAR SEALED PLASTIC BAG**





ALABAMA

DEPARTMENT OF FORENSIC SCIENCES

REGIONAL LABORATORY
P.O. BOX 210516
MONTGOMERY, AL 36121-0516
(334) 242-2938
FACSIMILE (334) 240-3284

MEDICAL EXAMINER
P.O. BOX 240591
MONTGOMERY, AL 36124-0591
(334) 242-3093
FACSIMILE (334) 260-8734

EVIDENCE RECEIPT

CASE NUMBER: 06MG00466 ID: 1 TYPE: Controlled Substances REFERENCES: LAB: MG

AGENCY NUMBER: 05-06-011 ORI NUMBER: AL045TASK DATE: 11/28/05 TIME: 1:22 pm

CASE NAMES	TYPE	RACE	SEX	DOB	AGE	STATUS
Richard J Marshall	S	B	M			

CHAIN OF CUSTODY	DATE	TIME
Secured at Montgomery Regional Laboratory Evidence Intake Area	11/28/05	1:22 pm

DESCRIPTION OF EVIDENCE:	SERVICE REQUESTED:
1 One brown paper bag identified to contain drug evidence	DRUG CHEMISTRY

ALL ITEMS LISTED ABOVE ARE AS DESCRIBED BY THE SUBMITTING AGENCY AND ARE SUBJECT TO VERIFICATION UPON INSPECTION BY THE ANALYST

REPORT TO:

Commander C. S. West
2nd Judicial Drug Task Force
146 East 4th Street
Luverne, AL 36049

SUBMITTED BY:

G. Lashun Hutson



ALABAMA
DEPARTMENT OF FORENSIC SCIENCES

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P.O. BOX 210516
MONTGOMERY, AL 36121-0516
(334) 242-2938

MEDICAL EXAMINER
P.O. BOX 240591
MONTGOMERY, AL 36124-0591
(334) 242-3093

CERTIFICATE OF ANALYSIS

Commander C. S. West
2nd Judicial Drug Task Force
146 East 4th Street
Luverne, AL 36049

CASE NUMBER: 06MG00466

SUBMITTING AGENCY CASE NUMBER: 05-06-011

SUSPECT(S): Richard J Marshall

Race	Sex	Date of Birth	Status
B	M		Adult

SERVICE REQUESTED: Drug Analysis

CHAIN OF CUSTODY:

G. Lashun Hutson from 2nd Judicial Drug Task Force
Michael L. Hitchcock
Robert Agee

DATE	TIME
11/28/2005	13:22
12/01/2005	14:35
01/13/2006	08:59

DESCRIPTION OF EVIDENCE:

- One brown paper bag containing residue

RESULTS OF ANALYSES: DATE(S) OF ANALYSES: 01/26/2006

- Laboratory analyses of the residue failed to reveal the presence of any controlled substances.

Sworn to and subscribed to me this the 2nd Day of Feb. 2006 as true and correct



Alabama Department of

Public Safety**BUREAU OF INVESTIGATION**

TYPE OR PRINT CLEARLY (USE BLACK INK) AND SUBMIT IN TRIPPLICATE

FINGERPRINT EXAMINATION REQUEST
ABI-28 (2-95)RETURN TO: LATENT PRINT UNIT
P.O. BOX 1511
Montgomery, AL 36192-0501
Phone: (334) 242-4244

1. CONTRIBUTOR TITLE: <i>255th Dist. Div. Tech. Foren.</i>		6. CONTRIBUTOR CASE NO: <i>05-06-011</i>						
2. NAME: <i>Christopher S. Doss</i>		7. TYPE OF CRIME: <i>Murder-Domestic</i>						
3. AGENCY: <i>Sheriff</i>		8. DATE OF CRIME: <i>6-20-05</i>						
ADDRESS <i>190 E. 9th Street</i>		9. VICTIM OF CRIME:						
CITY <i>Lawrence</i>	STATE <i>Al.</i>	ZIP 36043						
4. PHONE NO: <i>334-235-3390</i>		10. DPS LATENT CASE NO: <i>09-106-35-05</i>	12. ADDITIONAL EVIDENCE OR SUSPECT					
5. REPORT TO: <i>Sheriff</i>		13. SPECIAL INSTRUCTIONS:						
14. SUBMITTED BY: <i>Christopher S. Doss</i>		15. SIGNATURE <i>[Signature]</i>	16. AGENCY <i>255DTE</i>					
17. DATE/TIME <i>212-07-11 0900</i>								
18. DETAILED LIST OF ITEMS SUBMITTED INCLUDE NAME, RACE, SEX, DOB, OF ALL SUSPECTS. USE EXTRA SHEETS IF NECESSARY <i>Office Paper Bag Containing clear plastic bags</i>								
19. FOR DPS USE ONLY								
RECEIVED BY: <i>Sebastian H. Doss</i>	PRINT NAME <i>Christopher S. Doss</i>	SIGNATURE <i>[Signature]</i>	HOW RECEIVED <i>Received</i>					
EVIDENCE RETURNED TO: <i>Christopher S. Doss</i>	PRINT NAME <i>Christopher S. Doss</i>	SIGNATURE <i>[Signature]</i>	AGENCY <i>255DTE</i>					
EVIDENCE RETURNED BY: <i>Christopher S. Doss</i>	PRINT NAME <i>Christopher S. Doss</i>	SIGNATURE <i>[Signature]</i>	HOW RETURNED <i>MAIL</i>					
LOG NO: <i>099</i>	AS	CAS	CLTR	LTR	NLV	TYPE	REV.	EXHIBIT NO:

Alabama Department of
Public Safety

BUREAU OF INVESTIGATION

107704

TYPE OR PRINT CLEARLY (USE BLACK INK) AND SUBMIT IN TRIPPLICATE

**FINGERPRINT EXAMINATION REQUEST
(FBI 23-12-25)**

ABI-28 (2-95)

RETURN TO: LATENT PRINT UNIT
P. O. BOX 1511
Montgomery, AL 36192-0501
Phone: (334) 242-4244

19. FOR DPS USE ONLY

RECEIVED BY: <i>SF Shannon Fitzgerald</i>	PRINT NAME	SIGNATURE	HOW RECEIVED <i>Personally</i>	DATE/TIME <i>7-13-05 1:09 pm</i>				
EVIDENCE RETURNED TO:	PRINT NAME	SIGNATURE	AGENCY	DATE/TIME				
EVIDENCE RETURNED BY:	PRINT NAME	SIGNATURE	HOW RETURNED	DATE/TIME				
LOG NO: <i>049</i>	AS	CAS	CLTR	LTR	NLV	TYPE	REV.	EXHIBIT NO:

Alabama Department of

Public Safety

REPLY MAY BE MADE TO:

Shannon Fitzgerald
ABI HeadquartersDate: 8-25-05

Dear Contributor:

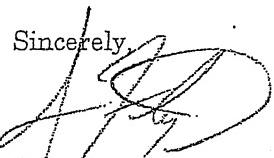
The enclosed case file is being returned to your department for the following reason:

 Statute of Limitations Has Expired No latent prints of value were found on the evidence which: is enclosed is being forwarded to the Department of Forensic Sciences. is being retained for pick up by your department.Retention of this file is recommended until such time your department determine it
Has no evidentiary value.

This file is the original and no copy will be retained by this department.

If this department can be of further assistance to you, please do not hesitate to
Contact me at (334) 895-4320.

Sincerely,


 Shannon Fitzgerald
 Certified Latent Print Examiner
 Alabama Bureau of Investigation

SF/ss



Headquarters
 Post Office Box J511
 Montgomery, Alabama 36102 - 1511

Driver License
 Post Office Box 1471
 Montgomery, Alabama 36102 - 1471